TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 173

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

vs.

SAMUEL A. SALVAGE

No. 280

SAMUEL A. SALVAGE, PETITIONER

vs.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONS FOR CERTIORARI FILED JUNE 25, 1935, AND JULY 25, 1935

CERTIORARI GRANTED OCTOBER 14, 1935

SUPREME COURT OF THE UNITED STATES

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ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

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1 Before United States Board of Tax Appeals

Docket No. 67653

SAMUEL A. SALVAGE, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Docket entries

Appearances:
For Petitioner: John G. Jackson, Esq., George B. Brooks, Esq.
For Respondent: M. B. Leming, Esq.

1932

Sept. 10—Petition received and filed. Taxpayer notified. (Fee paid.)
Sept. 10—Copy of petition served on General Counsel.
Nov. 8—Answer filed by General Counsel.
Nov. 19—Copy of answer served on taxpayer. General Calendar.

1933

Oct. 17—Hearing set December 7, 1933.
Nov. 4—Application for Order to take depositions filed by taxpayer.
Nov. 8—Order to take depositions of S. A. Salvage entered.
Nov. 27—Deposition of Samuel A. Salvage filed (1). Copies served by Notary.
Dec. 7—Hearing had before Mr. Smith—Division 5, on the merits submitted. Stipulation of facts filed at hearing—Petitioner's Brief due 30 days. Respondent's brief 15 days thereafter—Petitioner's Reply 10 days thereafter.
Dec. 19—Transcript of hearing of December 7, 1933, filed.

2 1934

Jan. 4—Brief filed by taxpayer. Copy served January 8, 1934.
Jan. 16—Brief filed by General Counsel.
Jan. 22—Reply brief filed by taxpayer. January 22, 1934, copy served.
Jan. 31—Stipulation to correct transcript filed.
Mar. 6—Memorandum opinion rendered—Mr. Smith, Division 5. Judgment will be entered for Respondent.
Mar. 6—Decision entered—Mr. Smith, Division 5.
May 31—Petition for review by United States Circuit Court of Appeals, Second Circuit, with assignments of error filed by taxpayer.
June 2—Proof of service filed by taxpayer.
July 24—Motion for extension to September 1, 1934, to complete and transmit record filed by General Counsel.
July 24—Order enlarging time to September 1, 1934, to prepare and deliver record entered.
Aug. 22—Agreed statement of evidence lodged.
Aug. 22—Praecipe with proof of service thereon filed.

1934
Aug. 22—Agreed statement of evidence approved and ordered filed.
Sept. 1—Order enlarging time for transmission and delivery of record to September 22, 1934, entered.

3 Before United States Board of Tax Appeals

[Title omitted.]

Petition

Filed Sept. 10, 1932

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency dated July 12, 1932 (Bureau Symbols IT: AR: A-4 OSC-60D), and as a basis for this proceeding alleges as follows:

I. The petitioner is an individual whose address is 200 Madison Avenue, New York, N. Y.

II. That notice of deficiency, a copy of which is attached hereto, was mailed to the petitioner on July 12, 1932, as the petitioner believes. Said copy is marked "Exhibit A."

III. The taxes in question are income taxes for the year 1920. The deficiency is asserted as $12,005.38. The amount in controversy is the entire amount of the deficiency as asserted, and in addition thereto petitioner has filed a claim for refund in the amount of $63,750, being the amount of tax paid by petitioner by reason
4 of the redemption of certain stock of American Viscose Corporation held by him. Copy of said refund claim is hereto annexed and marked "Exhibit B."

IV. The determination of tax set forth in said notice of deficiency is based upon the following errors:

(a) The Commissioner erred in holding that on December 30, 1922, the date of the conversion of the stock of The Viscose Company into the stock of American Viscose Corporation, it was practicable to allocate a portion of the cost or value on the date of acquisition to the preferred and to the common stock, respectively, of the latter corporation, and in holding that any taxable gain was realized by the taxpayer before he had received back the base cost of The Viscose Company stock.

(b) The Commissioner erred in holding that the taxpayer was taxable upon the entire difference between the cost of the preferred stock of American Viscose Corporation as adjusted as of December 30, 1922, and the amount received by him upon the redemption thereof in 1929.

(c) The Commissioner erred in holding that the base cost of one share of The Viscose Company stock, or of its equivalent, in the stock of American Viscose Corporation, was $100.

(d) The Commissioner erred in holding that the taxpayer did not receive as additional compensation to him pursuant to contract the difference between $100 for each share of Viscose Company stock, or the equivalent in stock of American Viscose Corporation, and the actual value of such stock in the years when it was received.

(e) The Commissioner erred in failing to allow the taxpayer's claim for refund of $63,750.

V. The facts upon which taxpayer relies as the basis of this proceeding are as follows:

(a) On May 4, 1916, the taxpayer purchased 2,000 shares of the stock of The Viscose Company at a cost of $166.66⅔ per share. In 1919 he gave away 1,975 shares of this stock, leaving a balance of 25 shares on hand. On December 30, 1932, American Viscose Corporation was organized to acquire the Viscose Company with an authorized capital of 480,000 shares of 7% cumulative preferred stock, callable at $110 per share, and 520,000 shares of common stock of $100 par value. Pursuant to the plan of reorganization, each holder of stock of The Viscose Company became entitled to 4 shares of the preferred stock and 5 shares of the common stock of the new corporation in exchange for each share of the old stock held by him. This exchange resulted in the issuance of 415,820 shares of the new preferred stock and 519,775 shares of the common stock. In connection with the reorganization, the taxpayer made an agreement with The Viscose Company, of which he was president, pursuant to which he was permitted to purchase 1,500 shares of the stock of that company at $100 per share, said stock, however, except two-sevenths thereof, to be retained by The Viscose Company and one-fifth thereof delivered to the taxpayer during each of the succeeding five years unless said corporation decided to repurchase the same at $100 per share. As a consideration of the right given to the taxpayer he agreed that he would not at any time during his life engage in any trade, business, or occupation for the manufacture or production of artificial silk or any material, goods, or articles from the same, nor enter into the service of any person, firm, or corporation engaged in such business, without the express written consent of said company. A copy of said contract is hereto annexed and marked "Exhibit C."

By letter of even date with said contract, to wit, December 30, 1922, The Viscose Company consented that the new stock of the American Viscose Corporation be substituted under said agreement for said 1,500 shares of its stock. The result of this transaction was that the taxpayer received as additional compensation for his services as president of the Viscose Company and of its successor corporation, American Viscose Corporation, and as a consideration for his entering into the agreement, Exhibit C, during the various years when the stock was delivered to him the difference between $100 per share of The Viscose Company stock (or its equivalent in American

Viscose Corporation stock) and the actual value of said stock upon the date the same was received by him.

(b) As to the 25 shares of stock of the Viscose Company held by the taxpayer in December 1922 in addition to the 1,500 shares above
7 referred to, 20 shares of the same were exchanged for the stock of the American Viscose Corporation in the agreed proportions on December 30, 1922, and the remaining 5 shares were so exchanged on June 30, 1925.

(c) In 1929 American Viscose Corporation redeemed all of its preferred stock at its call price of $110 per share and the taxpayer received $671,000 for the 6,100 shares held by him.

(d) In December 1922 when the American Viscose Corporation was formed and took over the business of the Viscose Company the nature of the assets was such that it was impracticable to apportion between the preferred and common stock of the new company the percentage of the cost or value to be attributed to each.

No fair idea of the value of the assets of the Company could be obtained from its books. The principal items of value consisted of plant and equipment, exclusive contracts with experts, patents, secret processes and refinements, rights to feature patents and processes belonging to Courtaulds, Ltd., and goodwill.

In connection with plant and equipment it was the policy of the Company to have separate parts of machinery manufactured in different places, finished at the factory and there assembled into complete machines. No charge was made on the books for overhead expenses, such as supervision and engineering costs and increased value of completed machines.

A contract with Dr. Charles A. Ernst gave the Company the exclusive right to his services and any discoveries and inventions that he might make. Dr. Ernest was Chief Chemist for the
8 Company and was instrumental in the development of the method of eliminating fuzz from the yarn which for the first time made it usable for knitgoods. A large part of the success of the Company was due to his activities. A contract with Herbert P. Slater, Chief Engineer of the Company, contained provisions similar to those of the contract with Dr. Ernst. Mr. Slater invented numerous valuable improvements in machinery of the Company, particularly in connection with the increase of its output by improvement of its spinning machine. The patents used by the Company were basic and were indispensable to its successful operation. The secret processes and refinements were also essential to its profitable operation, consisting of adjustment and concentration of chemicals and regulation of temperatures in different steps of the manufacturing process. The contract with Courtaulds provided that that Company would give to The Viscose Company the fullest information and disclosure of all machinery and processes, secret or otherwise. Any

exact or even approximately exact valuation of the intangible assets above mentioned was impossible.

(e) The earnings of the two companies from 1914 to 1929, after payment of taxes, were as follows:

1914	$1,334,852.73
1915	2,146,938.00
1916	6,569,745.00
1917	6,239,881.00
1918	3,860,908.34
1919	17,183,175.11
1920	15,960,981.97
9 1921	14,126,076.35
1922	26,796,540.43
1923	31,984,610.42
1924	23,956,381.17
1925	33,724,210.00
1926	27,609,050.03
1927	29,051,180.20
1928	31,645,901.98
1929	25,856,927.57

Based upon said earnings there was no substantial change in the value of the stock of American Viscose Corporation from 1922 through 1929 when the preferred stock here involved was redeemed. The taxpayer, therefore, upon the redemption of said preferred stock received nothing in addition to what he had given by way of cash and services pursuant to contract when the stock was delivered to him. The value of the preferred stock in each of the years from 1922 to 1927 was not less than $110 per share.

Wherefore, petitioner prays that this Board may hear the proceeding and determine:

(1) That it was impracticable to apportion the value of the preferred and common stocks of American Viscose Corporation on December 30, 1922, and that no taxable gain could have been received by the taxpayer until the whole amount paid by him for the stock had been recovered by him.

(2) That the base cost of the preferred stock to the taxpayer was its actual value on the date when received by him and not a fraction of the sum of $100 per share.

10 (3) That no taxable gain was realized by the taxpayer upon the redemption of the preferred stock of American Viscose Corporation in 1929.

(4) That the taxpayer is entitled to a refund of $63,750 with interest.

JOHN G. JACKSON,
GEORGE B. BROOKS,
(Signed) JOHN G. JACKSON,
(Signed) GEORGE B. BROOKS,
Counsel for Petitioner,
15 Broad Street, New York, N. Y.

[*Duly sworn to by Samuel A. Salvage, jurat omitted in printing.*]

11 *Exhibit A to petition*

[Copy]

NP-2-28
JULY 12, 1932.

IT:AR:A-4
OSC-60D

Mr. SAMUEL A. SALVAGE,
200 Madison Avenue, New York, New York.

SIR: You are advised that the determination of your tax liability for the year(s) 1929 discloses a deficiency of $12,005.38, as shown in the statement attached.

In accordance with section 272 of the Revenue Act of 1928, notice is hereby given of the deficiency mentioned. Within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter, you may petition the United States Board of Tax Appeals for a redetermination of your tax liability.

However, if you do not desire to petition, you are requested to execute the enclosed agreement form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing of this agreement will expedite the closing of your return(s) by permitting an early assessment of any deficiency and preventing the accumulation of interest charges,
12 since the interest period terminates thirty days after filing the enclosed agreement, or on the date assessment is made, whichever is earlier; whereas if no agreement is filed, interest will accumulate to the date of assessment of the deficiency.

Respectfully,

DAVID BURNET,
Commissioner.
By (Signed) J. C. WILMER,
Deputy Commissioner.

Enclosures:
Statement
Form 882
Form 870
NMC-2
627M

STATEMENT

IT:AR:A-4
OSC-60D

In re: Mr. Samuel A. Salvage, 200 Madison Avenue, New York, New York

Tax Liability

Year	*Tax Liability*	*Tax Assessed*	*Deficiency*
1929	$140,761.10	$128,755.72	$12,005.38

The deficiency shown herein is based upon the report dated
13 November 30, 1931, prepared by Revenue Agent W. J. Lambie

and transmitted to you under date of December 28, 1931, which report is made a part of this letter.

Careful consideration has been accorded your protest dated January 11, 1932, in connection with the findings of the examining officer, the information submitted at a conference held in the office of the internal-revenue agent in charge and the information furnished in the conference held with your representative in this office on May 19, 1932.

This office holds, however, that the evidence submitted to substantiate your contention that the value of the stock of the Viscose Company was in excess of $354.58, the amount allowed is not sufficient to warrant any change in the agent's adjustment in this item.

Relative to your contention that it was impracticable to determine the basic cost attributable to each class of stock of the American Viscose Company received by you in exchange for stock of the Viscose Company and that on this account no profit on sale or redemption of any of this stock was realized, until all the basic cost had been recovered, you are advised that this is not in accordance with the Federal income-tax laws. The recoverable cost must be determined upon the sale of the shares of stock and not be recovered out of the proceeds of the earlier sales of stock before reporting a profit on sales made at a later date.

Accordingly the adjustments made by the revenue agent are approved.

In the determination of the deficiency of $12,005.38 careful consideration has been given to the information and the statement set forth in your claim for refund of $63,750.00.

14 A consent which will expire December 31, 1932, except as extended by the provisions of section 277 of the Revenue Act of 1928 is on file for the year 1929.

A copy of this letter has been furnished your representative, George B. Brooks, 15 Broadway, New York, New York, under the authorization of the power of attorney on file in this office.

SCHEDULE No. 1

Year ended: 12/31/29

NET INCOME

Net income as disclosed by return:		
Ordinary net income	$368,329.23	
Capital net gain	516,833.34	
		$885,162.57
As revised		981,205.76
Net adjustment		96,043.17

(a) Capital net gain, 96,043.19.

SCHEDULE 1-A

Year: 1929

EXPLANATIONS OF ITEMS CHANGED

(a) Capital net gain:	
Reported	$516,833.34
Revised	612,876.53
Addition to income	96,043.19

15 The taxpayer reported the following sale of 6,100 shares of the preferred stock of the American Viscose Corporation and treated the profit as capital net gain.

Sales Price 10-1-29	671,000.00
Cost 1919-1922	154,166.66
	516,833.34

Reference is made to the request for appraisal of the value of the stock to the Commissioner of Internal Revenue dated Apr. 7, 1931, in which is incorporated all of the detailed particulars in connection with the above transaction. Included as a part of the above request letter is a calculation of the value of the stock prepared by Price Waterhouse & Company, auditors for the American Viscose Corp., and which calculation was furnished to the field examiner by the taxpayer. The value of the above 6,100 shares arrived at in the calculation is $58,123.47.

According to the Bureau letter dated December 1, 1931, this value has been verified and approved by the Commissioner. It is here accordingly used as the basis for the computation of profit from the sale.

SCHEDULE No. 2

Year ended: 12-31-29

Computation of Tax

Net income (from Schedule 1)		$981,205.76
Capital net gain		612,876.53
Income subject to surtax		368,329.23
16 Less:		
Dividends	$482,456.83	
Personal exemption and credit for dependents	4,700.00	
		487,156.83
Balance subject to normal tax		None
Surtax on $368,329.23	65,325.85	
Tax at 12½% on capital net gain of $612,876.53	76,609.65	
Total Tax		141,935.40
Less:		
Credit for earned net income (from Return)	220.00	
Income tax paid at source	954.30	
		1,174.30
Total tax assessable		140,761.10
Tax previously assessed		128,755.72
Additional tax to be assessed		12,005.38

STATEMENT OF TOTAL TAX LIABILITY

Year	Tax previously assessed	Adjustments proposed in accompanying report		Correct tax liability
		Deficiency	Overassessment	
1929	$128,755.72	$12,005.38	----------	$140,761.10

17 *Exhibit B to petition*

CLAIM

Form 843.

TREASURY DEPARTMENT,
INTERNAL REVENUE SERVICE.

Revised June 1930. To be filed with the Collector where Assessment was made or Tax Paid.

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

Collector's Stamp (Date received).

X Refund of Tax Illegally Collected.

Refund of amount paid for stamps unused or used in error or excess.

Abatement of tax assessed (not applicable to estate or income taxes).

STATE OF NEW YORK,
County of New York, ss.:

Name of taxpayer or purchaser of stamps, Samuel A. Salvage.
Business address, 200 Madison Avenue, New York City.
Residence, Glen Head, Long Island, New York.

The deponent, being duly sworn according to law, deposes
18 and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed. Brooklyn, N. Y.
2. Period (if for income tax, make separate form for each taxable year) from Jan. 1, 1929, to Dec. 31, 1929.
3. Character of assessment or tax. Income.
4. Amount of assessment, $128,755.72; dates of payment, quarterly during 1930.
5. Date stamps were purchased from the Government.
6. Amount to be refunded. $63,750.00.
7. Amount to be abated (not applicable to income or estate taxes).
8. The time within which this claim may be legally filed expires, under Section 322 (b) 1 of the Revenue Act of 1928, on March 15, 1932.

The deponent verily believes that this claim should be allowed for the following reasons:

1. The taxpayer claims that the tax assessed against him and paid by him upon an alleged gain derived from the redemption at $110, per share of 6,000 shares of the preferred stock of American Viscose Corporation should be refunded by reason of the fact that he received said 6,000 shares of preferred stock on or about December 30th, 1922, as the result of a consolidation of The Viscose Company and said American Viscose Corporation; that he had purchased 1,500 shares of the stock of The Viscose Company at $100 per share on that date and that said stock of The Viscose Company upon the date of the purchase had a value greatly in excess of the amount paid therefor, which value has been found by the Government to have been $1,164.70 per share; that taxpayer was an officer of The Viscose Company, and in effect, in purchasing the stock of said company, at $100 per share, was receiving as additional compensation the difference between said $100 per share and the real value of said stock; that such difference in value could not be taxed in the year 1929.

2. The taxpayer further claims that the preferred stock of the American Viscose Corporation received by him in 1922 upon the consolidation of the two companies was in fact a dividend upon the stock of The Viscose Company held by him and was not in any way taxable in 1929. He therefore claims that there should be refunded to him the entire amount of the tax paid by him upon the alleged gain derived from the redemption of said stock, and he further claims that the additional assessment levied against him by reason thereof should be abated.

Exhibit C to petition

Memorandum of agreement, made and concluded this 30th day of December 1922, by and between The Viscose Company, a corporation of the State of Pennsylvania, hereinafter called "The Company", of the one part, and Samuel Agar Salvage, of the City of New York, hereinafter called "Salvage", of the other part,

Whereas the Company has, in consideration of the agreement of Salvage hereinafter set forth, sold to him or his nominees 1,500 shares of its capital stock at par, and has issued certificates therefor as directed by Salvage,

Now This Agreement Witnesseth:

1. That Salvage does hereby agree to and with the Company that the said Company shall have the right to repurchase from him or his nominees, and he does hereby undertake, on behalf of himself, his heirs, executors, administrators, and assigns, to procure for and deliver to the said Company for repurchase at par the following proportions of the said 1,500 shares:

At any time during the year 1923, five-sevenths;
At any time during the year 1924, four-sevenths;
At any time during the year 1925, three-sevenths;
At any time during the year 1926, two-sevenths;

At any time during the year 1927, one-seventh of the said 1,500 shares.

2. Salvage does further hereby agree to and with the Company that he will not at any time during his life in any part of the United States of America, except the States of Utah, Nevada, and New Mexico, Canada, the United Kingdom of Great Britain, or the
21 Free State of Ireland, directly or indirectly, alone or in partnership, or as a Director or other Officer of a corporate body or as an Agent or otherwise howsoever, carry on or be engaged in any trade, business, or occupation for the manufacture or production of artificial silk, rayon, or Viscose, or of any material, goods, or articles from Viscose in any form, nor enter into the service of or, directly or indirectly, assist or act for any person, firm, or corporation in such trade or business or manufacturing, or contemplating the manufacture of, artificial silk or rayon, without the express written consent of the said Company.

In Witness Whereof, The Viscose Company has caused its corporate seal to be hereunto affixed and the said Samuel Agar Salvage has hereunto set his hand and seal the day and year first above written.

[CORPORATE SEAL]

THE VISCOSE COMPANY,
By NELSON S. SPENCER,
Chairman of the Board of Directors.

Attest:

CHAS. E. HENDRIKSON,
Secretary.

SAMUEL A. SALVAGE. [SEAL]

22 Before United States Board of Tax Appeals

[Title omitted.]

Answer

Filed Nov. 8, 1932

The Commissioner of Internal Revenue, by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, for answer to the petition filed in the above-entitled appeal, admits, denies, and avers as follows:

I. Admits the allegations contained in paragraph I of the petition.

II. Admits the allegations contained in paragraph II of the petition.

III. Admits that the taxes in controversy are income taxes for the year 1929. Admits that the deficiency asserted is $12,005.38. Denies all other allegations contained in paragraph III of the petition.

IV. Denies that the Commissioner erred as alleged in paragraph IV, subparagraphs (a) to (e), inclusive, of the petition.

V. (a) Admits that on May 4, 1916, the petitioner purchased 2,000 shares of stock of The Viscose Company at a cost of $166.66⅔ per share. Admits that in 1919 the petitioner gave away 1,975
23 shares of this stock, leaving a balance of 25 shares on hand. Admits that on or about December 30, 1922, the petitioner purchased 1,500 shares of the stock of The Viscose Company for $100.00 per share. Denies all other allegations contained in subparagraph (a) of paragraph V of the petition.

(b) Denies all the allegations contained in subparagraph (b) of paragraph V of the petition.

(c) Admits that in the year 1929 stock of the American Viscose Corporation which petitioner owned was redeemed at a price of $110.00 per share, or for a total of $671,000.

(d) & (e) Denies all the allegations contained in subparagraphs (d) and (e) of paragraph V of the petition.

Denies generally and specifically each and every allegation contained in the taxpayer's petition not hereinbefore admitted, qualified, or denied.

Avers that the allegations set out in the petition, even if true, are insufficient to show that the deficiency asserted is overstated in any manner.

Wherefore, it is prayed that the Board redetermine the deficiency for the calendar year 1929 to be equal to the amount determined by the Commissioner, viz, $12,005.38.

(Signed) C. M. CHAREST,
C. M. CHAREST,
General Counsel,
Bureau of Internal Revenue.

Of Counsel:
F. R. SHEARER,
Special Attorney,
Bureau of Internal Revenue.

24 Before United States Board of Tax Appeals

[Title omitted.]

Stipulation of facts

Filed Dec. 7, 1933

The following facts may for the purposes of this proceeding only be taken as true without further proof, subject to the right of either party to object to their relevancy, and without prejudice to the right of either party to adduce other evidence.

1. On December 30, 1922, Articles of Incorporation of American Viscose Corporation were filed with the Secretary of State of Delaware. The said Articles of Incorporation provided for an authorized capital of 480,000 shares of 7% accumulative preferred stock of the par value of $100 per share, callable at $110 per share, and 520,000 shares of common stock at a par value of $100 per share.

2. The American Viscose Corporation issued 4 shares of its preferred stock and 5 shares of its common stock in exchange for each share of stock of the Viscose Company. This exchange took place on December 30, 1922, and resulted in the issuance by American Viscose Corporation of 415,820 shares of preferred stock and 519,775 shares of common stock for 103,955 shares of the Viscose Company. At the time of the exchange the Viscose Company had outstanding 104,000 shares of capital stock. After the aforesaid exchange of the American Viscose Corporation owned all of the outstanding stock of the Viscose Company except 45 shares, which were later acquired by it upon the same basis.

3. It is further stipulated that the "Memorandum of Agreement" annexed to the taxpayer's petition herein is the contract under which petitioner acquired 1500 shares of the Viscose Company by purchase at $100 per share on December 30, 1922. The original of said "Memorandum of Agreement" is hereto annexed as Exhibit A and by reference made a part hereof. It is understood and agreed that the petitioner may withdraw said original "Memorandum of Agreement" and that there may be substituted in its stead with the Board a photostat copy of the same. It is further stipulated, understood, and agreed that the document annexed to the petitioner's deposition, taken in this proceeding before W. G. Briggs, a Notary Public, at New York, N. Y., on November 22, 1933, is not the contract under which the aforesaid 1500 shares of stock of the Viscose Company were purchased by the petitioner. In explanation of the petitioner's testimony as set forth in the aforesaid deposition there is attached hereto as Exhibit B a statement of petitioner's counsel in his behalf.

4. In the determination of the deficiency herein the respondent, for the purpose of determining gain or loss on the sale or redemption of securities received by the petitioner in exchange for shares of stock of the Viscose Company, apportioned the original cost of the stock of the Viscose Company owned by the taxpayer as follows, to wit: 37.778% to the preferred stock of the American Viscose Corporation and 62.222% to the common stock of said American Viscose Corporation so acquired in said exchange. These percentages were arrived at by the respondent by giving to the preferred stock of the American Viscose Corporation a value at date of said exchange of $110 per share and a value of $144.94 per share of common stock of said American Viscose Corporation so received in said exchange. This calculation resulted in apportioning to the 6100 shares of preferred stock of the American Viscose Corporation, which were redeemed by the corporation for $671,000 in the year 1929, a cost basis of $58,123.47. In determining the gain derived by the petitioner upon the redemption of the 6,100 shares of preferred stock of American Viscose Corporation the respondent deducted the said sum of $58,123.47 from the sum of $671,000 and arrived at the gain to the petitioner upon said redemption of $612,876.53.

5. There is hereto attached as Exhibit C copy of a memorandum prepared by Price, Waterhouse & Company, together with a copy of a

letter written by Charles E. Hendrixson, Treasurer of the American Viscose Corporation, to the petitioner under date of March 18, 1929, in respect of the basis for Federal income-tax purposes of stocks of the American Viscose Corporation held by the petitioner and also by his wife.

27 6. On December 30, 1922, the Viscose Company declared a dividend of 400% on its capital stock. The amount of this dividend received by the American Viscose Corporation on account of its holdings of stock in the Viscose Company was $41,582,000, and was paid as follows:

Cash	$1,013,543.53
United States Liberty Bonds and accrued interest thereon	31,908,286.12
Capital stock of Claymont Park and Improvement Co., 370 shares of $100 par value	37,000.00
Capital stock of Viscose Corporation of Virginia, 800 shares no par value	8,628,170.35
Total	41,582,000.00

On the same date the Viscose Corporation of Virginia declared a dividend of $2,000 per share on the 800 shares of its stock outstanding payable in cash. As the American Viscose Corporation had received these shares in part payment of the dividend of the Viscose Company referred to above, payment of $1,600,000 was made to the American Viscose Corporation in cash.

7. The respondent determined, as set forth in paragraph 4 hereof, an amount of $1,164.70 as the aggregate value of four shares of preferred and five shares of common stock of the American Viscose Corporation as of December 30, 1922, for the purpose of allocating thereto petitioner's cost of shares of Viscose Company. If, in

28 the consideration of this appeal, the Board of Tax Appeals or the Courts of Appeals should decide that the value of the stock of the Viscose Company as of said date is material, then and in that event the fair market value of the same may be found in the same amount, namely, $1,164.70 per share, diminished, however, according to the affect, if any, of any contract or other fact in evidence which, in the opinion of the Board or of the Courts of Appeals, may bear upon the fair market value of said shares.

8. There is annexed as Exhibit D the original income-tax return of the petitioner for the calendar year 1929. It is agreed that the said original return may be withdrawn by the respondent and a photostat substituted therefor.

(S.) GEO. B. BROOKS,
Attorney for Petitioner.

(S.) E. BARRETT PRETTYMAN,
General Counsel, Bureau of Internal Revenue,
Attorney for Respondent.

Exhibit A to stipulation

Memorandum of Agreement, made and concluded this 30th day of December 1922, by and between The Viscose Company, a corporation

of the State of Pennsylvania, hereinafter called "The Company", of the one part, and Samuel Agar Salvage, of the City of New York, hereinafter called "Salvage", of the other part,

29 Whereas the Company has, in consideration of the agreement of Salvage hereinafter set forth, sold to him or his nominees, 1,500 shares of its capital stock at par, and has issued certificates therefor, as directed by Salvage.

Now this agreement witnesseth:

1. That Salvage does hereby agree to and with the Company that the said Company shall have the right to repurchase from him or his nominees, and he does hereby undertake, on behalf of himself, his heirs, executors, administrators and assigns, to procure for and deliver to the said Company for repurchase at par, the following proportions of the said 1,500 shares:

At any time during the year 1923, five-sevenths;
At any time during the year 1924, four-sevenths;
At any time during the year 1925, three-sevenths;
At any time during the year 1926, two-sevenths;
At any time during the year 1927, one-seventh of the said 1,500 shares.

2. Salvage does further hereby agree to and with the Company that he will not at any time during his life in any part of the United States of America, except the States of Utah, Nevada, and New Mexico, Canada, the United Kingdom of Great Britain, or the Free State of Ireland, directly or indirectly, alone or in partnership, or as a Director or other Officer of a corporate body or as an

30 Agent or otherwise howsoever, carry on or be engaged in any trade, business, or occupation for the manufacture or production of artificial silk, rayon, or viscose, or of any material goods, or articles from viscose in any form, nor enter into the service of or, directly or indirectly, assist or act for any person, firm, or corporation, in such trade or business or manufacturing or contemplating the manufacture of artificial silk or rayon, without the express written consent of the said Company.

In witness whereof, The Viscose Company has caused its corporate seal to be hereunto affixed and the said Samuel Agar Salvage has hereunto set his hand and seal the day and year first above written.

THE VISCOSE COMPANY,
By NELSON S. SPENCER,
Chairman of the Board of Directors.

Attest:

CHAS E. HENDRIXSON,
Secretary.
SAMUEL A. SALVAGE [SEAL].

Memorandum of agreement between The Viscose Company and Samuel Agar Salvage.

Dated: Dec. 30, 1922.

Exhibit B to stipulation

Statement of George B. Brooks, Esq., counsel for petitioner

I prepared the petition filed in this proceeding September 10, 1932, to which is annexed as Exhibit C a "Memorandum of Agreement" under which the petitioner purchased 1,500 shares of stock of the Viscose Company. At the taking of petitioner's deposition before a notary public, W. G. Briggs, at New York, November 22, 1933, the petitioner was represented by John G. Jackson, Esq., and myself. The examination of the petitioner was conducted by Mr. Jackson. On that occasion the petitioner produced a Memorandum of Agreement bearing date of December 30, 1922, which he identified as "my copy of the original" contract under which he acquired 1,500 shares of capital stock of the Viscose Company. The said document was marked as Petitioner's Exhibit #2 to his said deposition. At the time of the production and marking of the said document as Petitioner's Exhibit #2, counsel for the petitioner did not compare it with the Memorandum of Agreement annexed to the petition herein as Exhibit C as aforesaid. After the deposition had been taken I discovered the discrepancy in the document and brought it to the attention of Mr. Sherriff, respondent's representative at the taking of said deposition. The explanation I now make in respect of the discrepancy in the two documents is that I have been informed by the taxpayer that the Memorandum of Agreement, copy of which is attached to the petition as Exhibit C and the original of which is hereto annexed as Exhibit A, superseded the Memorandum of Agreement marked as Petitioner's Exhibit #2 and filed with his aforesaid deposition. I was also informed that both documents were executed on the same date, to wit, December 30, 1922.

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(s) GEO. B. BROOKS,
Counsel for Petitioner.

Exhibit C to stipulation

THE VISCOSE COMPANY,
Marcus Hook, Pa., March 13, 1929.

Mr. S. A. SALVAGE,
#171 Madison Avenue, New York City, N. Y.

DEAR MR. SALVAGE: I mailed you yesterday, calculations as made up by Price, Waterhouse and Company, defining the values of yours and Mrs. Salvage's stock in the American Viscose Corporation. At the time of mailing you the above statement I had not been able to check it over, but since I have done some figuring. I can quite realize that you can lose a lot of time arriving at the final figures, and I do not understand why our Auditors did not give you this in a short analysis at the end of their statement. I am giving you such an analysis by which you can arrive at what you are after quickly. The other, however, will prove a good statement to keep in case there is any question raised by the Internal Revenue Collector.

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You first purchased on May 4th, 1916, two thousand (2,000) shares of The Viscose Company stock. Under date of June 5th, 1919, you

transferred to Mrs. Salvage, 1,975 shares, retaining 25 for yourself. Of this latter 25 shares, you converted 20 into American Viscose Corporation stock under date of December 30, 1922, and the remaining 5 shares you converted under date of June 30th, 1925. You then purchased under date of December 29th, 1922, 1,500 shares of The Viscose Company stock, which you converted into American Viscose Corporation stock under date of December 30th, 1922.

Mrs. Salvage received from you under date of June 5th, 1919, 1,975 shares of The Viscose Company stock, which she converted into American Viscose Corporation stock under date of December 30th, 1922.

Your present holdings and the dates acquired are as follows:

Mr. Salvage:
12/30/22—7,600 Shares Common Stock
7/1/25— 25 Shares Common Stock } 7,625 Shares
12/30/22—6,080 Shares Preferred Stock
7/1/25— 20 Shares Preferred Stock } 6,100 Shares

Mrs. Salvage:
12/30/22—9,875 Shares Common Stock.
12/30/22—7,900 Shares Preferred Stock.

Mr. Salvage purchased the first 2,000 shares of The Viscose Company stock at $166.66⅔, and the 1,500 shares at par, or $100.00 per share.

34 In the table below, I give you the cost of the original Viscose Company shares, and I also show in another column the cost to you of the American Viscose Corporation shares.

Date Acquired	Viscose shares	Cost per share	Total Cost	Date of Conversion into A. V. Corp. Sh.	Cost to you of A. V. Corp. Shares now held by you
5/4/16	20	$166.66⅔	$3,333.33	12/30/22 { 80 Pref. / 100 Com.	*$1,259.26 / 2,074.07
12/29/22	1,500	100.00	150,000.00	12/30/22 { 6,000 Pref. / 7,500 Com.	*56,667.00 / 93,333.00
5/4/16	5	166.66⅔	833.33	6/30/25 { 20 Pref. / 25 Com.	*197.21 / 636.12
			154,166.66		154,166.66

Mr. Salvage sells 6,100 shares at $110.00, or a total of $671,000.00
Cost of above to Mr. Salvage, see above statement *58,123.47

Profit on sale of Preferred stock to Mr. Salvage, which is taxable 612,876.53

With reference to Mrs. Salvage's stock:

Date Acquired	Viscose shares	Cost per share	Total Cost	Date of Conversion into A. V. Corp. Sh.	Cost to you of A. V. Corp. Shares now held by you
6/15/20	1,975	$364.58	$720,045.50	12/30/22 { 7,900 Pref. / 9,875 Com.	*$272,018.79 / 448,026.71
			720,045.50		720,045.50

Mrs. Salvage sells her Preferred shares at $110.00 per share, or	$869,000.00
Value of the above to Mrs. Salvage at the time she acquired same, see statement above	*272,018.79
Profit to Mrs. Salvage, which is taxable	596,981.21

From the above, you can also check out the cost to you of
35 the Common stock, and I think that you will find this statement clear, but if there is any question that you care to raise I will endeavor to answer same.

I have not, so far, endeavored to work up the valuations of the shares through the intricacies involved at the time of the transfers, but this was done very carefully by our Auditors and I think you can rely on same being correct.

It means quite a lot of digging to arrive at the definite figures, but if you want me to work into that further I will also be glad to do it for you.

Yours very truly,

(Sgd.) CHAS. E. HENDRIXSON,
Treasurer.

CEH.FO'D.

Exhibit "C" to stipulation

S. A. Salvage

Memorandum re basis for Federal income tax purposes of Stocks of American Viscose Corporation held by Mr. and Mrs. Salvage, computed from information submitted by Mr. C. E. Hendrixson

On May 4, 1916, Mr. Salvage purchased 2,000 shares stock of The Viscose Company at a cost of $166.66⅔ per share.

On June 5, 1919, Mr. Salvage donated to Mrs. Salvage 1,975 of the shares purchased by him on May 4, 1916. Under Sec. 113 (a)
(4) of the Revenue Act of 1928, the basis of these shares
36 in the hands of Mrs. Salvage was their fair market value at the time of their acquisition by her. Since the shares of The Viscose Company have never been listed for trading, and since there were no sales at or about the date of the gift that would indicate their fair market value, such a value can only be arrived at on the basis of their value as shown by the company's books at or near the date of the gift or on the basis of the valuation placed thereon for purposes of Federal taxation. There is not available a balance sheet of the company at June 5, 1919. The balance sheet, per books, at December 31, 1918, showed capital and surplus applying to the 100,000 shares outstanding at $18,981,659.27, and the balance sheet at December 31, 1919, showed capital and surplus of $30,916,593.27, an increase of $11,934,934.00. Assuming that the increase in the valuation occurred evenly throughout the year, the capital and surplus on May 31, 1919, a date conveniently close to June 5, 1919, would

have been $23,954,548.44, or $239.55 per share on the 100,000 shares then outstanding. This, however, does not take into consideration the additional value of the stock by reason of sustained earnings over and above a fair return on its net balance sheet assets. In the computation of the value of the stock for purposes of Federal capital stock tax this factor was taken into consideration and on the basis of earnings up to and including those for the calendar years 1918 and 1919 resulted in valuations for Federal capital stock tax purposes of $35,000,000.00 and $38,500,000.00, respectively. On the basis of these valuations, and assuming a steady increase in the
37 value of the stock throughout the year 1919, the stock would have had a value at May 31, 1919, a date sufficiently close to June 5, 1919, for all practical purposes of $36,458,333.33, or $364.58 per share on the 100,000 shares then outstanding. This value of $364.58 per share is considered the value, at the time of receipt by her, of the 1,975 shares of stock of The Viscose Company received as a gift by Mr. Salvage.

On December 30, 1922, Mr. Savage exchanged 1,520 shares stock of The Viscose Company for 6,080 shares of the 7% preferred stock of American Viscose Corporation and 7,600 shares of the common stock of that company. Of the shares so exchanged 20 shares had been acquired by him in May 1916 at a cost of $166.66⅔ per share, and the remaining 1,500 shares had been purchased on December 29, 1922, at a cost of $100.00 per share. It is assumed that Mr. Salvage did not include in his Federal income the tax return for the year 1922 an amount representing the difference between the cost of the 1,500 shares acquired at par on December 29, 1922, and their value at that date.

On December 30, 1922, Mrs. Salvage exchanged her 1,975 shares stock of The Viscose Company for 7,900 shares 7% preferred stock and 9,875 shares common stock of American Viscose Corporation.

The 7% preferred and the common stocks of American Viscose Corporation each have a par value of $100.00 per share.

Under Art. 600 of Regulations 74 it is necessary to divide the cost or other basis of the shares given in exchange for the shares of American Viscose Corporation received by Mr. Salvage and
38 Mrs. Salvage, on the basis of the respective values of each class of stock received at the date received by them.

The capital of American Viscose Corporation immediately subsequent to the reorganization on December 30, 1922, was as follows:

Capital stock:	
519,775 shares of common stock	$51,977,500.00
415,820 shares 7% cumulative preferred stock	41,582,000.00

The company had neither surplus nor deficit at that date.

There were no sales of stock of American Viscose Corporation at or near December 30, 1922, on the basis of which the fair market values of the stocks issued by the company could be computed. All the shares outstanding had been issued in exchange for stocks of

subsidiary companies. The book value of $93,559,500.00 was represented by:

Stocks of subsidiaries at price of acquisition less dividends declared	$59,037,670.35
U. S. Securities	31,908,286.12
Cash and other assets, net	2,613,543.53
	$93,559,500.00

The value of the stocks of the subsidiaries held, as determined for purposes of Federal capital stock tax for the taxable year ending June 30, 1924, based on the balance sheets of the subsidiaries at December 31, 1922, and the earnings for the five years ending on that date, were as follows:

The Viscose Co. 103,955 of $77,930,000.00	$77,896,280.00
104,000	
Viscose Corporation of Virginia	8,624,000.00
Claymont Park and Improvement Co. (estimated)	35,000.00
	$86,555,280.00

39 or $27,517,609.65 in excess of the value at which they were carried in the accounts of American Viscose Corporation.

On this basis of valuation, the only one available which takes into account the earning power of the company's stock, the stocks of American Viscose Corporation had a fair value of $121,077,109.65 on December 30, 1922.

Since the preferred stock is nonparticipating as to dividends and as to assets in excess of $110.00 per share on dissolution, and is callable at $110.00 per share, it could not be reasonably held that that stock had a value in excess of $110.00 per share at December 30, 1922. Deducting from the total value of $121,077,109.65 an amount of $45,740,200.00, representing the value of the 415,820 shares of preferred stock at $110.00 per share, there remains an amount of $75,336,909.65 applicable to the 519,775 shares of common stock, or $144.94 per share.

For each share of common stock of The Viscose Company received there were acquired in exchange the following stocks of American Viscose Corporation.

4 shares preferred stock, value as above	$110.00 each	or	$440.00	or 37.778%
5 shares common stock, value as above	144.94 each	or	724.70	or 62.222%
			$1,164.70	100.00%

The basis of the shares of American Viscose Corporation acquired at December 30, 1922, on the above basis, is, therefore, as follows:

Mr. Salvage:

In respect to the shares acquired in exchange for 20 shares purchased in May 1916, at a total cost of $3,333.33:

40 Preferred, 80 shares	37.778%	or	$1,259.26,	or $15.741 per share
Common, 100 shares	62.222%	or	2,074.07,	or 20.741 per share
	100.000%		$3,333.33	

In respect to the shares acquired for 1,500 shares purchased in December 1922, at a total cost of $150,000.00:

Preferred, 6,000 shares	37.778%	or $56,667.00,	or $9.4445 per share
Common, 7,500 shares	62.222%	or 93,333.00,	or 12.4444 per share
	100.000%	$150,000.00	

Mrs. Salvage:

In respect of the 1,975 shares received as a gift in June 1919, and having a value at the time of receipt of $364.58 per share, or a total value of $720,045.50:

Preferred, 7,900 shares	37.778%	or $272,018.79,	or $34.43 per share
Common, 9,875 shares	62.222%	or 448,026.71,	or 45.27 per share
	100.000%	$720,045.50	

On June 30, 1925, Mr. Salvage exchanged the remaining 5 shares of the Viscose Company stock held by him for 20 shares preferred and 25 shares common stock of American Viscose Corporation.

The capital and surplus of American Viscose Corporation at December 31, 1924, and December 31, 1925, amounted to $94,333,247.70 and $94,753,719.48, respectively, an increase of $240,471.78 during the year 1925. The securities of subsidiaries owned at December 31, 1924, were carried in the accounts at a valuation of $59,000,-
41 670.35, the same as the value at which they were set up in the accounts upon acquisition in December 1922. The valuation of the stocks of subsidiaries owned was, however, determined by the capital stock tax division of the Treasury Department, on the basis of balance sheets at December 31, 1924, and earnings to that date, to be $157,883,000.00, or $98,882,329.65 in excess of the value at which those held by American Viscose Corporation were carried in its accounts. Since the valuation of $157,883,000.00 refers to the whole of the stocks of subsidiaries there should be deducted from this difference the value at which the stocks of subsidiaries not owned by American Viscose Corporation at December 31, 1924, but acquired on June 30, 1925, were taken up in its accounts, viz: $40,500.00, leaving a net excess of $98,841,829.65.

The fair value of the stocks of American Viscose Corporation at June 30, 1925, may thus be arrived at as follows:

Capital and surplus, per books, December 31, 1924	$94,333,247.70
Excess of value of stock of subsidiaries as determined by the Treasury Department over value at which carried in the account of December 31, 1924, or at which acquired	98,841,829.65
One-half of net increase in surplus during year 1925	189,985.89
	$193,365,063.24

This valuation may be applied as follows:

To 416,000 shares of preferred stock at $110.00 per share, $45,760,000.00.

To 520,000 shares of common stock $147,605,063.24, $283,856 per share.

In exchange for the remaining 5 shares stock of The Viscose Company, purchased in May 1916, at a total cost of $833.33, there
42. were, therefore, received the following shares of stock of American Viscose Corporation:

4 shares of preferred stock, value as above $110.00 each, or	$440.00	or 23.665%
5 shares of common stock, value $283,856 each, or	1,419.28	or 76.335%
	$1,859.28	100%

On the above basis the shares of American Viscose Corporation so received would have a basis for tax purposes as follows:

Preferred, 20 shares	23.665%	or $197.21,	or $9.86	per share
Common, 25 shares	76.335%	or 636.12,	or 25.445	per share
	100.000%	$833.33		

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INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES FROM SALARIES OR WAGES OF MORE THAN $3,000
AND INCOMES FROM BUSINESS, PROFESSION, RENTS, OR SALE OF PROPERTY

For Calendar Year 1929

File This Return With the Collector of Internal Revenue for Your District on or Before March 15, 1930

Do Not Write in These Spaces
No. 1258

PRINT NAME AND ADDRESS PLAINLY HERE

Samuel A. Salvage
171 Madison Avenue,
New York City, New York State

Occupation President American Viscose Co.

Fold, Check, N.D. Examined
$ 327589
Case 1-New York

1. Are you a citizen or resident of the United States? Yes
2. If you filed a return for 1928, to what Collector's office was it sent? 2nd Dist. Ny
3. Is this a joint return of husband and wife? No
4. Name and address of husband or wife if a joint return was made and the Collector's office where it was filed: Katharine A. Salvage
5. Were you married and living with husband or wife on the last day of your taxable year? Yes
6. If not, were you on the last day of your taxable year separated or in your household were or more persons closely related to you?
7. If your status in respect to questions 5 and 6 changed during the year, state date and nature of change.
8. How many dependent persons (other than husband or wife) under 18 years of age or incapable of self-support were receiving their principal support from you on the last day of your taxable year? Three

INCOME

	Amount received	Deduct cost or other basis as per Schedule IV	
1. Salaries, Wages, Commissions, etc. (State name and address of employer) Lentz Price, Co., 171 Madison Av. Ny	$ 2,000	$	$
The Viscose Co. Marc & Stock Co.	10,000		12,000 -
Compensation in 1929			
2. Income from Business or Profession. (Attach Schedule A)			
3. Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest on tax-free covenant bonds)			3,208 41
4. Interest on Tax-free Covenant Bonds, Upon Which a Tax was Paid at Source			47,715 00
5. Income from Annuities. (Attach Schedule B) (State name and address) 1929	3,000 -		
6. Income from Fiduciaries. (State name and address)			
7. Rents and Royalties. (Attach Schedule C)			
Profit from Sale of Real Estate, Bonds, etc. (Attach Schedule D) Losses			302,122 27
8. Dividends on Stock of Domestic Corporations			492 456 89
9. Taxable Interest on Liberty Bonds, etc. (Attach Schedule E)			
10. Other Income (including dividends on stock of foreign corporations). (State nature of income)			
(a) 1924 Sec Sch attached			233 266 02
(b)			
11. Total Income as Items 1 to 11			436 324 09

DEDUCTIONS

12. Interest Paid		18 219 20	
13. Taxes Paid. (Explain in Schedule F) See Schedule F		41 216 68	
14. Losses by Fire, Storm, etc. (Explain in Table at head of page 2)			
15. Bad Debts. (Explain in Schedule F)			
16. Contributions. (Explain in Schedule F) See Sch attached		48 759 18	
17. Other Deductions Authorized by Law. (Explain in Schedule F)			
18. Total Deductions as Items 12 to 18		107 334 86	
19. Net Income (Item 12 minus Item 19)		329 24	

EARNED INCOME CREDIT

20. Earned Income (not over $20,000)	20000	-
21. Less: Personal Exemption and Credit for Dependents	4200	-
22. Balance (Item 21 minus 22)	15800	-
23. Amount taxable at 1½% (not over $4,000)	2 4200	-
24. Amount taxable at 2% (not over $8,000)	4000	-
25. Amount taxable at 4% (Balance over $8,000 of Item 23)	17800	-
26. Normal Tax 1½% of Item 23	60	-
27. Normal Tax 2% of Item 24	80	-
28. Normal Tax 4% of Item 25	692	-
29. Surtax on Item 21	180	-
30. Tax on Earned Net Income (total of Items 27 to 29)	1632	-
31. Credit of 25% of Tax (not over 25% of Item 23, or $400)	400	-

COMPUTATION OF TAX (See Instruction 22)

32. Net Income (Item 20 above)	329,24	24
33. Less: Dividends (Item 9)	324,24	24
Interest on Liberty Bonds, etc. (Item 10)	-	
36. Credit for Dependents	1200	-
37. Personal Exemption	3500	-
38. Total of Items 34 to 37	4700	-
39. Balance (Item 33 minus 38)	-	
40. Amount taxable at 1½% (not over $4,000)	-	
41. Balance (Item 39 minus 40)	-	
42. Amount taxable at 2% (not over $4,000)	-	
43. Amount taxable at 4% (Item 41 minus Item 42)	-	
44. Normal Tax (1½% of Item 40)	-	
45. Normal Tax (2% of Item 42)	-	
46. Normal Tax 4% of Item 43	-	
47. Surtax on Item 33 (see Instruction 23)	65235	84
48. Tax on Net Income (total of Items 44 to 47)	65235	84
49. Tax on Capital Gain or Loss (12½% of Col. E, Sched. D)	6460	17
50. Total of all taxes between Items 48 and 49	71695	01
51. Less Credit of 25% of Tax on Earned Income (Item 31)	400	-
52. Total Tax (Item 50 minus 51)	71295	01
53. Less Income Tax Paid at Source	470	30
54. Income Tax paid to a foreign country or U. S. possession		
55. Balance of Tax (Item 52 minus Items 53 and 54)	70824	71

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements, has been examined by me, and to the best of my knowledge and belief is a true, correct, and complete return made in good faith for the taxable year stated, pursuant to the Revenue Act of 1928 and the Regulations issued thereunder.

Subscribed and sworn to before me this 14th day of March, 1930.

Gertrude Hammes Agent
171 Madison Ave N.Y. City
(Address of witness)

(Official character)

An amended return must be marked "Amended" at top of return. Certificate of Assessment will be prepared only if requested on your

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SCHEDULE A—INCOME FROM BUSINESS OR PROFESSION (See Instructions 2)

1. Total receipts from business or profession (state kind of business)

Cost or Gross Sales

2. Labor
3. Materials and supplies
4. Merchandise bought for sale
5. Other costs (Itemize below or on separate sheet)
6. Plus inventory at beginning of year
7. Total (Lines 2 to 6)
8. Less inventory at end of year
9. Net Cost or Gross Sales (Line 7 minus Line 8)

Enter "C," or "C or M," on Lines 6 and 8 to indicate whether inventories are valued at cost, or cost or market, whichever is lower.

Gross Business Deductions

10. Salaries not included on "Labor," in Line 2. (Do not deduct compensation for your services)
11. Interest on business indebtedness to others
12. Taxes on business and business property
13. Losses (explain in table at foot of page)
14. Bad debts arising from sales or services
15. Depreciation, obsolescence, and depletion (explain in table provided at foot of page)
16. Rent, repairs, and other expenses (Itemize below or on separate sheet)
17. Total (Lines 10 to 16)
18. Total Deductions (Line 9 plus Line 17)

No. Shares	Description	Date Acquired	Cost	Amount Received	Profit	Loss
100 shrs.	N.Y.Central	9/13/28	$17587.50	$20781.00	$3,193.50	
50 "	Und.Ill.Fisher	11/7/28	5860.00	4913.00	1,053.00	
50 "	" " "	4/9/29	5525.00	4979.85	554.25	
50 "	" " "	6/21/29	6762.50	7413.00	650.50	
50 "	Elec.B. & S.	9/17/28	8931.25	6940.50	1,990.75	
50 "	" " "	6/11/29	5137.50	5185.50	48.00	
50 "	" " "	9/30/29	8712.50	4263.00		4,449.50
50 "	Amer.Superpr.	1/12/29	4810.00	5310.50	500.50	
100 "	" "	6/12/29	3940.00	5956.50	2,016.50	
50 "	Lambert Co.	1/23/29	6406.25	7060.50	654.25	
50 "	Gen-Cable A	2/14/29	5500.00	5713.00	213.00	
50 "	United Corp.	5/1/29	2823.75	3401.75		
50 "	" "	5/5/29	2465.00	2676.75		2,670.00
50 "	" "	5/6/29	3502.50	3685.00		
100 "	" "	9/27/29	7205.00	(1740.50)		
				(1834.25)		
50 "	Louisville Gas & Elec.	6/15/29	2051.25	2200.25	151.00	
100 "	Pub.Serv.N.J.	6/19/29	10016.25	11392.00	1,375.75	
50 "	Glidden Co.	8/5/29	2983.75	2939.25		44.50
50 "	Mont.Ward	8/5/29	5862.50	6435.50	573.00	
50 "	" "	9/22/29	8462.50	5489.25		2,973.25
10 "	Chase Nat'l	8/6/29	2274.25	2388.52	114.27	
50 "	Amer.& For.Pr.	8/20/29	7662.50	8179.25	516.75	
50 "	" " " "	9/6/29	8112.50	9648.00	1,535.50	
50 "	Elec.Pwr.& Lt.	9/19/29	4947.50	2165.50		2,082.00
50 "	Pullman	9/25/29	4447.50	4325.50		122.00
50 "	U.S.Steel	10/9/29	10890.00	9235.50		1,654.50
480 "	Atlas Powder	7/12/29	43100.00	46284.00	3,184.00	
$49,400.	U.S.Treas.notes	8/9/28	48720.75	48609.06		111.69
500 shrs.	Howe Sound	8/21/28	33537.50	35142.50	1,605.00	
$100,000.	City of Newark	2/28/28	105255.52	98784.03		6,471.29
5000 shrs.	Tobacco Products(exchanged for 5000 shrs. United Stores A	1928	288015.00	16700.00		311,315.00
2000 "	Cont. Oil (exchanged for 1212 shrs. 1928 Cont.Oil of Del.		39,168.00	26917.02		12,250.98
1000 "	Amer/& For.Pwr.	2/12/29	106025.00	115710.00	9,685.00	
500 "	Old Colony Tr. Ctfs.	5/23/28	26000.00	25980.00		20.00
			$888,610.52	$872,838.13	$32,173.02	$44,164.71
				Less profits		32,173.02
				Total losses,		$11,991.69

a 17

45

Item No. 11	Commissions:	Viscose Corp. of Va.		$21,740.51
		The Viscose Co., Pa.,		200,998.95
		Lustre Fibres, Ltd., London, Eng.		L 1,000.00
	Directors' fees, Viscose Co., Pa.			L 1,000.00 ✓
	Proceed: sale of rights:			
	Columbia Graph.	$733.74		
	Amer. Superpower	79.05		
	Glidden,	59.87		
	"	46.92		
	Irving Tr. Co.	18.98		518.56
		Total		$223,466.02

a18

Item 14	Taxes paid:		
	N.Y. State Tax,	$18,535.37	
	Real Estate	22,141.14	
	Club	175.50	
	Duty	46.67	
	Tax on stock,	120.00	
	Total,	$41,016.68	

a19

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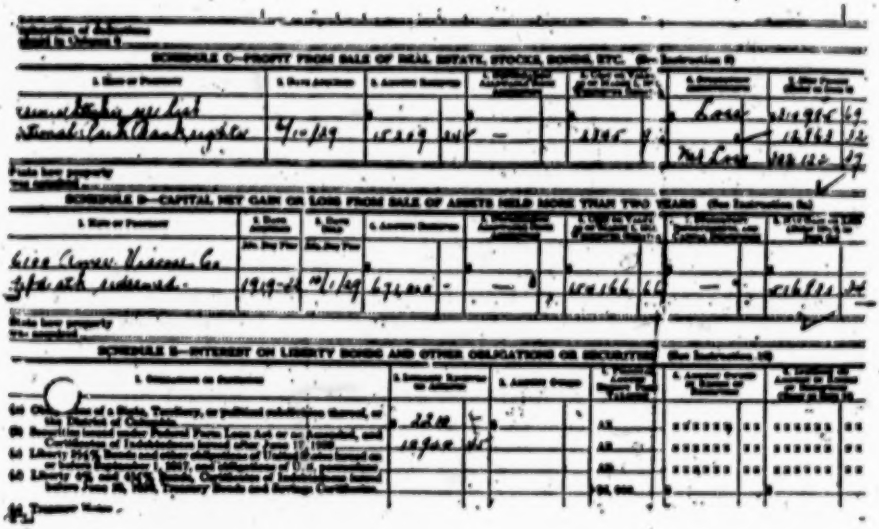
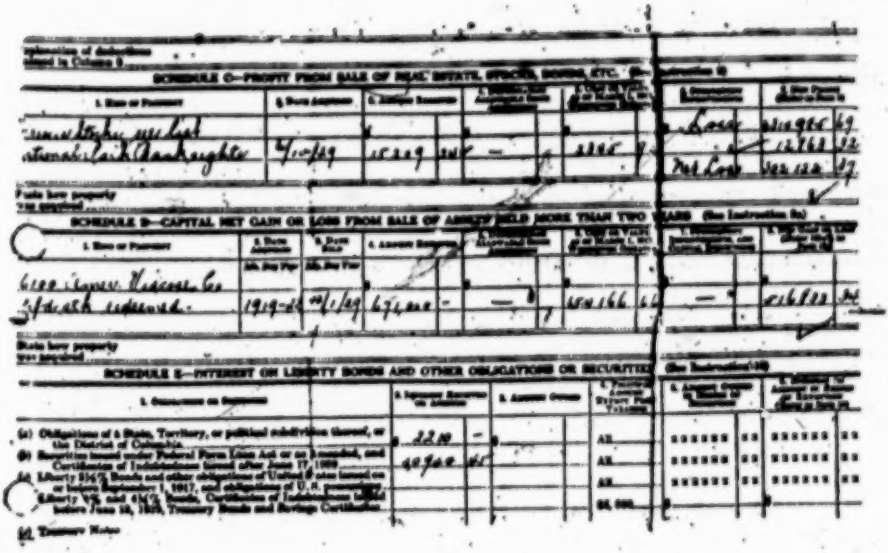


Item 17. Contributions:

St. John's Hospital Building Fund,	$ 3,666.66
Salvation Army,	50.00
Hope Farm,	200.00
Nassau Hospital,	200.00
American Red Cross	50.00
Fishers Island Health Nursing Assn.,	500.00
Children's Shelter Fund,	500.00
Y. M. C. A., Nassau-Suffolk	350.00
St. George's Parish House Bldg. Fund,	2,000.00
St. George's Soc. of N.Y.	417.50
L.I. Biological Ass'n.,	100.00
St. John's Church, Fishers Island, N.Y.	500.00
Oyster Bay Reformed Church,	100.00
Diocese of Long Island,	100.00
Police Relief Assn. of Nassau County,	1,200.00
Family Welfare Assn. Nassau County,	25.00
Foot Clinics of N.Y.,	25.00
The Greenvale School,	4,000.00
Amer. Soc. Prevention Cruelty to Animals,	100.00
Amer. Foundation for the Blind,	25.00
Camp Fire Girls,	25.00
Church Mission of Help	150.00
Country Home for Convalescent Babies,	250.00
Nassau County Council Boy Scouts,	500.00
Lady Isabella Howard Fund,	250.00
Lattingtown Church,	250.00
Slater Mills Association,	1,000.00
Cathedral of St. John Divine Bldg. Fund,	5,000.00
Nassau County Soc. Prevention Cruelty to Children,	25.00
Fishers Island Union Chapel Society	50.00
Glen Cove Community Chest,	200.00
Welfare Federation of Chester & Vicinity, Chester, Pa.,	500.00
North Country Community Assn.,	50.00
Y. M. C. A.	102.02
Total,	$40,759.18

47



SCHEDULE C—PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC.

1. Kind of Property	2. Date Acquired	3. Date Sold	4. Selling Price	5. Cost or Other Basis	6. Net Profit	7. Net Loss
[illegible]						
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]		[illegible]

SCHEDULE D—CAPITAL NET GAIN OR LOSS FROM SALE OF ASSETS HELD MORE THAN TWO YEARS (See Instruction 8a)

1. Kind of Property	2. Date Acquired (Mo. Day Yr.)	3. Date Sold (Mo. Day Yr.)	4. Selling Price	5. Cost or Other Basis	6. Net Profit	7. Net Loss	8. Deduction for Depletion (Amount, Basis, Rate)	9. Net Profit or Loss (Enter here and in Item 7a)
[illegible]								
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]			[illegible]

SCHEDULE E—INTEREST ON LIBERTY BONDS AND OTHER OBLIGATIONS OR SECURITIES (See Instruction 10)

1. Description of Securities	2. Interest Received or Accrued	3. Amount Owned	4. Interest Exempt from Normal Tax and Surtax	5. Amount Owned at Beginning of Taxable Year	6. Amount Owned at End of Taxable Year
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia	2210 —		All		
(b) Securities issued under Federal Farm Loan Act or as amended, and Certificates of Indebtedness issued after June 17, 1929	40[illegible]		All		
(c) Liberty 3½% Bonds and other obligations of United States issued on or before September 1, 1917, and obligations of U. S. issued under Liberty 3½% and 4½% Bonds, Certificates of Indebtedness dated before June 26, 1919, Treasury Bonds and Savings Certificates			All		
(d) Treasury Notes			$5,000		

EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULE A AND B

1. Kind of Property (If building, state material of which constructed)	2. Date Acquired	3. Cost When Acquired	4. Prescribed Rate	5. Amount Allowed or Allowable	Amount of Depreciation Claimed on 6. Previous years	Amount of Depreciation Claimed on 7. This year

EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC., CLAIMED IN SCHEDULE A, AND IN ITEM 10

1. Kind of Property	2. Date Acquired	3. Cost or Other Basis of Property Lost, Destroyed, or Damaged	4. Depreciation Subsequent to Acquisition	5. Amount Recovered through Insurance, etc.	6. Deductible Loss

49 Before United States Board of Tax Appeals

Docket No. 67653

SAMUEL A. SALVAGE, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

John G. Jackson, Esq., and George B. Brooks, Esq., for the Petitioner.

Mason B. Leming, Esq., for the Respondent.

Memorandum opinion

SMITH. In this proceeding the petitioner contests the determination of a deficiency in income tax for 1929 of $12,005.38. The petitioner claims that not only is there no deficiency, but that he is entitled to a refund of $63,750.

The question in issue is the basis for the determination of profit derived by the petitioner in 1929 from the redemption by the American Viscose Corporation of 6,100 shares of 7 percent cumulative preferred stock owned by him.

In the early part of 1922 the petitioner was the owner of 25 shares of stock of The Viscose Co., which he had acquired on May 4, 1916, at $166.66⅔ per share. On December 15, 1922, The Viscose Co. increased its capital stock from 100,000 to 104,000 shares. The petitioner was permitted to acquire 1,500 shares of the new stock
50 at $100 per share, its par value, which was admittedly less than the real value. The acquisition was pursuant to a memorandum of agreement entered into between the petitioner and The Viscose Co. on December 30, 1922. Under the agreement The Viscose Co. retained the right to repurchase at par the following proportions of the said 1,500 shares:

At any time during the year 1923, five-sevenths;
At any time during the year 1924, four-sevenths;
At any time during the year 1925, three-sevenths;
At any time during the year 1926, two-sevenths;
At any time during the year 1927, one-seventh.

Under the same contract the petitioner agreed that he would—

"* * * not at any time during his life in any part of the United States of America, except the States of Utah, Nevada, and New Mexico, Canada, the United Kingdom of Great Britain, or the Free State of Ireland, directly or indirectly, alone or in partnership, or as a Director or other Officer of a corporate body or as an Agent or otherwise howsoever, carry on or be engaged in any trade, business, or occupation for the manufacture or production of artificial silk, rayon, or Viscose, or of any material, goods, or articles from Viscose in any form, not enter into the service of or,

51 directly or indirectly, assist or act for any person, firm, or corporation in such trade or business or manufacturing or contemplating the manufacture of artificial silk or rayon without the express written consent of the said Company."

The option above referred to was never exercised.

On the same date, December 30, 1922, the petitioner entered into another contract with The Viscose Co., whereby he obtained the right to exchange each share of stock so acquired by him "for shares of American Viscose Corporation of Delaware, at the rate of one share of your stock for four shares of the preferred and five shares of the common stock of said Delaware company."

On December 30, 1922, petitioner exchanged his 1,525 shares of The Viscose Co. stock, which had cost him $154,166.66, for 6,100 shares of the preferred stock of the American Viscose Corporation and 7,625 shares of common stock of that corporation. The preferred shares were callable at $110 per share and were redeemed at that figure in 1929, the petitioner receiving $671,000 upon such redemption.

In filing his income-tax return for 1929, the petitioner reported as capital net gain from the redemption of the shares of preferred stock in question, the difference between $671,000, the amount received, and $154,166.66, the entire cost of his 1,525 shares of The Viscose Co. common stock exchanged for the shares of preferred and common stock of American Viscose Corporation.

52 The respondent in determining the deficiency herein apportioned 37.778 percent of the petitioner's cost ($154,166.66) to the preferred and 62.222 percent to the common stock of the American Viscose Corporation to arrive at the true capital net gain. This apportionment was arrived at by giving to the preferred and common stock of the American Viscose Corporation values of $110 and $144.94 per share, respectively, as of the date of exchange. In this manner the respondent determined that the total cost to the petitioner of the 6,100 shares of preferred stock of the American Viscose Corporation was $58,123.47 and that the difference between that amount and $671,000, or $612,876.52, was the correct amount of the capital net gain.

In this proceeding the petitioner makes two contentions: (1) That he made a "bargain purchase" of the 1,500 shares of stock of the Viscose Co. on December 30, 1922; that the fair market value of such stock at that time was $1,164.70 a share; and that upon such calculation the petitioner was not taxable on any part of the proceeds of the preferred stock received by him in 1929; and (2) that it is impracticable to determine the market value of the shares of preferred stock and of the common stock of the American Viscose Corporation received by him in exchange for his shares of stock of The Viscose Co. on December 30, 1922, and that accordingly the only capital net gain is the amount returned by him, namely, the excess of $671,000 over his investment of $154,166.66 in the shares of stock of The Viscose Co.

At the hearing of this proceeding counsel for the petitioner stated that the petitioner had filed claim for the refund of $63,750 of the tax paid by him for 1929 upon the theory that the basis
53 for the determination of the gain realized from the redemption of the shares of preferred stock was the fair market value of the shares of stock of The Viscose Co. at the time he purchased 1,500 shares on December 30, 1922. Counsel for the petitioner stated:

"* * * In connection with the apportionment and, of course, for the purpose of apportionment, the Commissioner used the value for the old Viscose Company stock, of $1,164.70 a share, which value was accepted.

The petitioner contends that if a value could be arrived at, and if that value was $1,164.70 a share, it was very obvious that in buying that stock at $100 a share he bought it at a figure substantially less than its real value. He was an employee of the Company. The purchase was directly tied up with his employment. His testimony shows that he regarded it as remuneration for that purpose, and then he should not have paid any tax in 1929, and that is the basis of the claim for refund. I wish, of course, Your Honor, to make it clear that that point has only been presented by reason of the position taken by the Commissioner."

The testimony of the petitioner in this proceeding was taken by deposition. At page 41 of the deposition appears the following:

"Q. Do you now regard it as compensation for services rendered prior to 1922?

54 "A. I just feel that I made a bargain with the company in 1922, and that was closed, so far as I was concerned."

Again, at page 43:

"Q. Do you now regard that difference in value as compensation for services?

"A. I do not. I feel I made a deal with the company, and that ended it."

Again, at page 45:

"Q. You regarded the stock in part, anyway, as compensation, did you not?

"A. I regarded it as giving me an increased investment and interest in the business."

And, again, at page 51:

"Q. Did you attend all directors' meetings?

"A. Yes.

"Q. Can you state whether or not the directors in 1922 passed any minute authorizing this sale to you of the stock in consideration for your services?

"A. No.

"Q. They did not pass such a minute?

"A. No; there is nothing in connection with compensation for services. * * *"

And, again, at page 52:

"Q. Mr. Salvage, when did you first decide to treat this excess in value over $100 as compensation?

"A. I don't think I ever regarded it as compensation. I regarded it as a transaction whereby I bought something cheap."

The petitioner further deposed that neither for 1922 nor for any year subsequent thereto did he treat as compensation in his
55 income-tax returns any portion of the value of the shares of stock of The Viscose Co. which he received in that year; and that The Viscose Co. itself in its income-tax return never treated as compensation for services rendered any part of the claimed value of the shares of stock of The Viscose Co. sold to the petitioner. The petitioner, nevertheless, contends that under the Board's opinions in Albert Russel Erskine, 26 B. T. A. 147; William T. Bivin, 21 B. T. A. 105; G. Wildy Gibbs, 28 B. T. A. 18; and E. D. Knight, 28 B. T. A. 188; he is entitled to regard the fair market value of the shares of The Viscose Co. on December 30, 1922, as the basis for the computation of the cost to the petitioner of the shares of preferred and common stock of the Viscose Corpration received by him in exchange for his 1,525 shares of stock of The Viscose Co. We have carefully examined those opinions but do not consider them in point. The contentions of the petitioner upon this point are not sustained.

The point chiefly relied upon by the petitioner is that it was impracticable to allocate the cost of the petitioner's investment in the shares of stock of The Viscose Co. between the preferred and common shares of the Viscose Corporation received in exchange. The Commissioner has made the allocation in accordance with article 597 of Regulations 74. In making this allocation he has simply followed the allocation made by a firm of certified public accountants employed by the interested parties for the purpose of arriving at the taxable net gain under the respondent's regulations. Such computation was placed in evidence as a part of the stipulation of
56 facts by the parties. The petitioner contends there was no free market in the shares of the preferred and common stock of The Viscose Co. or of the Viscose Corporation either in 1922 or in any subsequent year; that the Board held in The Viscose Co., 3 B. T. A. 444, that the invested capital of The Viscose Co. could not be determined for invested capital purposes for the years 1917, 1918, and 1919; that in the course of its opinion the Board said, "It is impossible to determine the values of the mixed aggregate of tangible and intangible property"; hence, it is argued that a determination of the market values of the preferred and common shares based upon their book value is not accurate.

We are of the opinion that there is no merit in this contention of the petitioner. Possibly the fair market value of the common shares of the American Viscose Corporation at December 30, 1922, was in excess of $144.94 per share, the amount used by the above-referred

to firm of certified public accountants and adopted by the Commissioner. But if the fair market value was in excess of that amount it would only serve to reduce the cost allocable to the preferred stock and thereby increase the capital net gain realized by the petitioner from the redemption of his shares of preferred stock over the amount determined by the respondent. The finding of the respondent is approved upon the basis of Glenn H. Curtiss, et al., 21 B. T. A. 629; Philip D. C. Ball, 27 B. T. A. 388, 394; C. H. Mead Coal Co., 28 B. T. A. 599, 610; Tex-Penn Oil Co., 28 B. T. A. 917, 974.

Judgment will be entered for the respondent.

Enter:

Entered Mar. 6, 1934.

57 Before United States Board of Tax Appeals

Washington

Docket No. 67653

SAMUEL A. SALVAGE, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Decision

Pursuant to the determination of the Board, as set forth in its memorandum opinion, entered March 6, 1934, it is

Ordered and Decided: That there is a deficiency of $12,005.38 for the year 1929.

Enter:

Entered March 6, 1934.

[SEAL] (Signed) CHARLES P. SMITH,
Member.

58 Before United States Board of Tax Appeals

[Title omitted.]

Petition for review

Filed May 31, 1934

Taxpayer, petitioner in this cause, by John G. Jackson, counsel, hereby files his petition for a review by the United States Circuit Court of Appeals for the Second Circuit of the decision by the United States Board of Tax Appeals rendered on March 6, 1934, determining a deficiency in the petitioner's Federal Income Tax for the Calendar year 1929, and respectfully shows:

I

The petitioner is an individual whose address is Glen Head, New York.

II

NATURE OF CONTROVERSY

The controversy involves the proper determination of the
59 petitioner's liability for Federal Income Tax for the Calendar Year 1929 and his right to obtain a refund of an amount paid as tax for said year.

On December 30, 1922, petitioner was the owner of twenty-five (25) shares of the Capital Stock of The Viscose Company, which he had acquired in 1916 at a cost of $166.66⅔ per share.

On December 30, 1922, the following events took place:

(a) A new corporation, American Viscose Corporation, was formed and offered to exchange for all of the stock of The Viscose Company its own stock, offering four shares of its $100 7% Cumulative Preferred Stock callable at $110 per share and five shares of its Common Stock of a par value of $100 per share for each share of said stock of The Viscose Company.

(b) Petitioner entered into a contract with The Viscose Company whereby he was permitted to acquire at $100 per share 1,500 shares of the stock of The Viscose Company, the issuance of which had been authorized by an increase of capitalization, and under which contract The Viscose Company retained the right to repurchase a portion of the stock at intervals in said contract set forth, and the petitioners agreed to certain restrictions upon his business activities.

(c) The Viscose Company consented that its repurchase contract be modified so as to permit the exchange of said 1,500 shares of stock for the stock of American Viscose Corporation in the ratio
60 above set forth, and accordingly the petitioner received for the 1,525 shares owned by him 6,100 shares of the Preferred Stock of said Company and 7,625 shares of the Common Stock.

In 1929 said Preferred Stock was redeemed at $110 per share and petitioner received $671,000 upon such redemption.

In filing his 1929 Return petitioner took the view that it was impracticable to allocate the original cost of The Viscose stock between the Common and Preferred Stock of the New Corporation and that he was therefore entitled to recover the full cost of said stock and was required to pay a tax only upon the excess received by him upon the redemption. The Commissioner, upon auditing said Return, took the position that said apportionment was practicable and by use of a formula arrived at an apportioned cost of said Preferred Stock of $58,123.47 and thus increased petitioner's tax in the amount of $12,005.38.

Petitioner urged before the Board of Tax Appeals that the theory of the Commissioner as to the practicability of such apportionment was incorrect and that the deficiency should not have been assessed, which contention, however, was overruled by the Board.

The second point involved in this controversy arises out of the fact that the Commissioner found in arriving at his apportionment figures that the market value of the stock of The Viscose Company on December 30, 1922, was $1,164.70 per share. This fact has been stipulated by both parties in the stipulation entered into upon the appeal to the Board. Petitioner contends that inasmuch as it is agreed that the above figure was the fair market value of the Viscose Com-
61 pany stock upon the date upon which he acquired it, and inasmuch as he was an employee of the Company and entered into an employment contract coincident with the purchase of said shares, that such purchase was in fact a so-called "bargain purchase" and that the difference between $1,164.70 per share and $100 per share in fact was additional compensation to him in 1922 and that he was not taxable upon any gain whatsoever by reason of the redemption in 1929, but on the other hand is entitled to a refund of $63,750.

Petitioner's counsel also entered objections to certain testimony taken upon the examination of petitioner by deposition, which objections are more fully set forth in the assignments of error herein contained.

III

The said petitioner being aggrieved by the Findings of Fact and Conclusions of Law contained in said Finding and Opinion of the Board, and by its decision entered pursuant thereto, desires to obtain a review thereof by the United States Circuit Court of Appeals for the Second Circuit.

IV

Assignments of Error

The petitioner assigns as error the following facts and omissions of the Board of Tax Appeals:

(1) The failure to find that it was impracticable to deter-
62 mine the market value of the shares of The Viscose Company stock on December 30, 1922, and to allocate a portion of such value between the Preferred and Common shares of American Viscose Corporation.

(2) The failure to find that the petitioner was entitled to deduct the entire cost of The Viscose Company stock from the amount received by him in 1929 from the redemption of the Preferred Stock of the American Viscose Corporation and to pay a tax only upon the excess.

(3) The holding that the petitioner is liable for a deficiency for the year 1929 of $12,005.38.

(4) The holding that the base cost of the stock of The Viscose Company to the petitioner was $100 per share.

(5) The failure to hold that the petitioner received as additional compensation under the contract of December 30, 1922, between petitioner and The Viscose Company, the difference between $100 per share and $1,164.70 per share upon the 1,500 shares of The Viscose Company stock covered by said contract.

(6) The failure to hold that the petitioner was entitled to a refund of $63,750.

(7) The reception in evidence and the consideration of the testimony of petitioner upon cross examination contained on pages 41, 45, 51, and 52 of the deposition, to all of which objection is taken.

JOHN G. JACKSON,
Counsel for Petitioner.

63 *Duly sworn to by John G. Jackson, jurat, omitted in printing.*

64 Before United States Board of Tax Appeals

[Title omitted.]

Notice of Filing Petition for Review

Filed June 2, 1934

Please Take Notice that the Petitioner on the 31st day of May, 1934, filed with the Clerk of the United States Board of Tax Appeals at Washington, D. C., a Petition for Review by the United States Circuit Court of Appeals for the Second Circuit of the decision of the Board heretofore entered in the above-entitled cause. A copy of the Petition for Review and the Assignments of Error, as filed, are hereto attached and served upon you.

Dated, New York City, this 31st day of May, 1934.

Respectfully,

(s) JOHN G. JACKSON,
Counsel for Petitioner,
15 Broad Street,
New York City.

Personal service of the foregoing Notice, together with a copy of the petition for review and assignments of error, mentioned therein, is hereby acknowledged this 1st day of June 1934.

(s) ROBERT H. JACKSON,
General Counsel, Bureau of Internal Revenue,
Attorney for Respondent.

65 In United States Circuit Court of Appeals for the Second Circuit

[Title omitted.]

Statement of the evidence

Filed Aug. 22, 1934

The above appeal was heard before Member Charles P. Smith, of the United States Board of Tax Appeals, on December 7, 1933. John G. Jackson and George B. Brooks appeared for the petitioner and Mason B. Leming for the respondent.

A stipulation of facts was entered into between the parties which stipulation has been made a part of the record. The only other evidence before the Board was the deposition of Samuel A. Salvage, the petitioner.

Samuel A. Salvage

Direct Examination:

Samuel A. Salvage testified that in 1908 he was engaged in the yarn business in his own name and that he represented mainly
66 English manufacturers. Salvage stated that he knew that in 1902 Courtaulds, Ltd., bought the Viscose patents for England from a firm called Gross & Bevan. Courtaulds would not export to the United States because someone in the United States owned the American rights to the Viscose patents. In 1906 Salvage was employed by Courtaulds, Ltd., as their agent in the United States. Later Salvage was asked by Courtaulds to develop their import business which turned out to be very successful. Courtaulds then organized a British corporation called Lustre Fibres, Ltd., licensed to do business in the United States. Salvage was made an agent for that corporation but since he had very little capital Courtaulds guaranteed all of his acts to all agencies that witness acquired, which were the French, Belgian, German, Austrian, Italian, Swiss, and English. Courtaulds also agreed to guarantee all credit risks and all of Salvage's acts. The contract between Lustre Fibres, Ltd., and petitioner was signed on July 2, 1914, and a copy was introduced as Petitioner's Exhibit No. 1.

The manufacture of artificial silk was begun in the United States in 1911. The business developed rapidly so Courtaulds, Ltd., purchased the Viscose patents for the United States and sent a director to this country with a view to building a plant here. This plant was built at Marcus Hook, Pennsylvania, in 1910, and began production in December of that year. This plant is still operating and is owned by Courtaulds and other shareholders. Courtaulds being the controlling stockholder. At the time the corporation at Marcus Hook was incorporated, Salvage had the agency for practi-

67 cally all foreign producers of rayon or artificial silk. In 1914 and after the sinking of the "Lusitania", business with Germany and Austria was discontinued but with other countries was increasing because Salvage developed the consumption of Rayon into hosiery. The United States became the largest consuming country in the world for rayon.

The Belgian agency was discontinued in 1921 and the Swiss agency in 1925. The basic patent that was purchased for the United States for viscose solution was terminated in 1920 and the Dupont Company went into competition with the Viscose Company. This company did not possess the technical ability to develop rayon so they went with the French and received all the technical assistance from the French, giving them a third of their stock for it in the new company they formed here. At that time Salvage was agent for the French companies. The French companies asked Salvage to resign, which he did. Dupont did not have the same quality of product that the Salvage agency had and, of course, could not force the French product on the consumers, and, therefore, Dupont was unsuccessful in selling the French product, so the French firm asked Salvage if he would renew the agency, which he refused to do. The Belgian firm requested Salvage to continue as their agent, but they were so lined up with the French interests that Salvage refused to go with them. This was in 1921. Other competitors came into existence at that time, such as Dupont Fibre Silk Company; Tubize Artificial Silk Corporation of America, Inc., which began business around 1920, and the American Borvisk Corporation of Cleveland was incorporated in 1917. The latter company is now owned by
68 the Industrial Fibre Corporation of America, which today is known as Industrial Rayon Corporation. They were all unsuccessful.

Salvage further testified that he started in business in his own name, S. A. Salvage, in 1907, and that his business grew as agent for British firms. Courtaulds requested witness to become their agent, and since their business grew so rapidly Courtaulds wanted Salvage to give up his business entirely and go with them. Salvage refused, but about two years later finally agreed on the terms Courtaulds gave him to give up his own business entirely. They stipulated that Salvage must not have a dollar invested in his own business and should come entirely with Courtaulds.

Salvage was paid any commissions he would have collected if he had remained in business. He was asked what he thought his business would bring five years hence, and he told them, so they started to pay him that then. Salvage's business was continued under the name of S. A. Salvage Company for a short time and then under another name, Salvage refusing to allow his name to be used further. When Salvage induced Courtaulds to buy the American patents, Courtaulds appointed Salvage agent for the American Viscose Company, which they formed here. Salvage was urged to give up his

business, and sold the same in 1912. Salvage from then on was agent for Lustre Fibres, Ltd., and the American Viscose Company (corporation), but was not an officer. Salvage's duties were administrative and selling. He managed the entire American business outside of production. When it came to tariff matters, he managed
69 them as he thought they should be managed, with no advice from the other side at all. Tariff protection for the rayon industry in the United States was given in 1914.

Salvage received a nominal salary from Lustre Fibres, Ltd., together with a minimum and maximum guarantee of commissions. The Viscose Company approved of Salvage being employed by Lustre Fibres, Ltd., in that way and they gave Salvage a salary plus an interest in the profits.

Prior to contract dated January 2, 1922, Salvage was working under a former agreement which gave him a salary and an interest in the profits and during the war period the profits were large, and when the war terminated the profits diminished considerable. The major shareholders felt that Salvage should receive some additional remuneration and in the latter part of 1919 they offered to double his interest in the profits of the business, which was not agreeable to Salvage. The shareholders felt that Salvage had put this offer into effect and had collected double profits in 1920 and 1921, which Salvage had not done. This resulted in bringing about the agreement of December 30, 1922, whereby the Viscose Company agreed to sell Salvage certain shares of stock. This agreement was offered in evidence as Petitioner's Exhibit No. 2.

Under this agreement the company had the right under Article 1 to repurchase the shares under certain conditions. This option was never exercised by the company. At the end of 1927 Salvage was in possession of 1,500 shares of stock. He lodged them with the company until he qualified. These shares were delivered to Salvage and issued in his name. These shares are still owned by Salvage or his wife.

70 The Viscose Company was reorganized into the American Viscose Corporation and Salvage exchanged one share of Viscose Company for four preferred shares of American Viscose Corporation and five shares common. Letters in regard to the 1,500 shares in question were introduced as Petitioner's Exhibits No. 3 and No. 4.

The Viscose Company reserved the repurchase right as stated in Paragraph 1, because it wished to assure itself of Salvage's continued services over this period of years. When Salvage started with the company for Courtaulds in 1911, it had a production of 320,000 pounds and today the production is over 75,000,000 pounds. It was through that constant growth that Courtaulds' confidence was maintained in the way Salvage was running the business. The growth was phenomenal. A new plant was built at Roanoke, Virginia, in 1917; another at Lewistown, Pennsylvania, in 1921; and another at Parkersburg, West Virginia, in 1927. The Company purchased a

plant at Nitro, West Virginia, and another plant at Meadville, Pennsylvania, in 1930. Production in 1911 was 320,000 pounds—in 1932, 70,000,000 pounds, and the capacity of the six plants today is over 75,000,000 pounds. These plants are running at full capacity. Over the period in question there has been a steady increase in production, as follows:

Year	*Production*	*Imports*
1918	7,386,000 lbs.	290,000 lbs.
1919	8,228,000 "	1,150,000 "
1920	10,180,000 "	1,850,000 "
1921	13,760,000 "	3,670,000 "
1922	19,670,000 "	3,650,000 "

71 In 1920, competitors in the United States produced 150,000 pounds; in 1921, 1,250,000; and in 1922, 4,830,000. Viscose production today is about 42% of the entire production of the United States.

The contract dated January 2, 1922, was offered in evidence as Petitioner's Exhibit No. 5.

The stock of the Viscose Company has never been listed on any exchange nor has there ever been any market in the stock over the counter or otherwise. Subsequent to December 1922, witness purchased 1,500 shares of stock of Viscose Corporation from Dr. Ernst for the company. Dr. Ernst was a chemist and when Courtaulds purchased the Viscose patents for this country together with a small firm called the Genasco Silk Company of Lansdowne, Pennsylvania, Salvage went to the plant and found Dr. Ernst and thought that Dr. Ernst knew more about the industry; the chemical end of it, than anyone else, and in buying the plant, negotiated his services and kept him in the company. Dr. Ernst remained with the company until 1925, when he was retired. During that period he was under a contract of employment. This contract of employment, dated January 2, 1922, was introduced in evidence as Petitioner's Exhibit No. 6.

When the industry was started in this country it was very secretive and Salvage felt it wise to keep it so, so in developing the business, purchases of machinery were made from two or three different sources, parts from each, which machines or parts were assembled by the Viscose engineering force in order to keep it secret. The expense of installation and assembling of different parts into an operating
72 unit was charged to current expense. The books did not reflect any capital value for the contract with Dr. Ernst nor did they reflect the capital value for any contracts with valuable employees. The Viscose Company had a contract with Courtaulds, Ltd., to acquire the patents for the Viscose solution which Courtaulds had for the United States. A copy of the contract, dated December 22, 1913, between Courtaulds, Ltd., and the American Viscose Corporation was introduced in evidence as Petitioner's Exhibit No. 7. Copy of the contract dated May 20, 1915, was introduced as Petitioner's Exhibit No. 8. These two contracts were never capitalized on the books of the company. A representative of Courtaulds came to the United States to assist in the operations of the Viscose Company in 1914, but not since that date up to the war. After the war a director of Courtaulds

came to the United States to look after the production end of the business. There was a constant exchange of ideas and development between Salvage and Courtaulds, Ltd., following this contract.

Dr. Ernst was responsible in a very large way for all chemical improvements in the industry. He improved the product until it had the highest quality in the world. Rayon yarn was not usable for knitting purposes at one time, but due to the refinements made by the company's chemists in the quality of the production it became usable. Dr. Ernst was concerned with this development.

Herbert P. Slater was Chief Engineer for the Viscose Company from 1910 to 1925, inclusive. His particular duties had to do with the mechanical operations such as spinning machines. He made
73 improvements under the directions of Dr. Ernst which were not capitalized on the books.

The patents acquired by Courtaulds and used by the Viscose Company were imperative in developing the business of the company. The secret processes were also of assistance. The plants were not open to the public and never have been. Salvage testified (Tr. 34) that it would not be possible to place a valuation on the intangible assets.

Cross-examination by Mr. SHERRIFF:

Salvage stated that from 1922 the production of the company had grown from 19,670,000 pounds to over 75,000,000 pounds in 1933. The production of the Viscose Company for the years 1923, 1924, and 1925 is as follows:

1923	26,856,000 pounds
1924	27,040,000 "
1925	34,635,000 "

Since 1925 production has more than doubled.

Upon consolidation of the Viscose Company with the American Viscose Corporation in December 1922 Dr. Ernst, as well as Salvage, was given the rights to purchase the stock at $100.00 a share.

In December 1922 there were five other stockholders that Salvage knew of because Dr. Ernst had spread his shares around his family. The stockholders of the Viscose Company in 1922 were Dr. Charles A. Ernst, Samuel A. Salvage, Nelson S. Spencer, and A. G. Dickson of Philadelphia. Dr. Ernst owned 4½%; Salvage owned
74 2½%; Spencer, 1%; and Courtaulds, Ltd., owned the balance.

Salvage's compensation in 1922 was in the form of salary, commissions, and interest in profits, as covered by the contract (Exhibit 5), which contract fully covers Salvage's agreement of compensation with the Viscose Company.

On page 38 of the deposition the following appears:

"Q. In your 1922 income-tax return I presume you reported the entire compensation you received from the company?

"A. Yes.

"Q. Now, can you say whether that compensation includes any excess in the estimated value of this stock over $100?

"A. Yes; oh, you mean as worked out from that contract, do you?

"Q. I will frame the question in another way, if it will be helpful to you.

"Mr. JACKSON. I will concede the answer to that question, if you want.

"The WITNESS. Yes.

"Mr. JACKSON. That he did not include any difference between the hundred dollars a share, which Mr. Salvage paid, and the full value.

"The WITNESS. No; I did not.

"Q. Then, am I to understand that the salary as reported in 1922 in your personal income-tax return did not take into account this stock?

"A. No.

"Q. It only represented the money received from the Viscose Company?

"A. Actual cash received plus dividends.

"Q. Now, is the same true with respect to the years 1923, 1924, 1925, 1926, and 1927?

"A. Yes.

75 "Q. We are correct in assuming, then, that the income reported as compensation did not include any item of value of this stock above a figure of $100?

"A. Yes.

"Q. Can you give me any reason why you did not report that value or any portion of the value over $100 in your returns for any of those years?

"A. Yes. That was a bargain purchase I arranged with Courtaulds, Limited, for the Viscose Company stock.

"Mr. SHERIFF. I move that the answer be stricken out as not responsive and as being a conclusion and opinion of the witness. Now, read the question.

"(The question was read by the stenographer.)

"Q. Did you regard any portion of the value of that stock as salary to you or compensation for services?

"A. I regarded it as a bargain I made with the company.

"Q. Did you regard it as compensation for services?

"A. I felt they owed money to me.

"Q. Can you state, then, why you did not report any portion of that in your income tax return for 1922 or up to 1927?

"A. I do not see how I possibly could have arrived at any figure to do so, but I reported all the dividends from it.

"Q. Did you put anything in your return or make any statement to the effect that you had received compensation the amount of which could not be liquidated or estimated?

"A. No.

"Q. Mr. JACKSON. That is objected to, as the return speaks for itself.

76 "Q. Did I understand the answer was no?

"A. No.

"Q. You were president of the Viscose Company at that time, were you not?

"A. 1922?

"Q. 1922.

"A. No; I was vice president.

"Q. In that connection, did you have any knowledge concerning the preparation and filing of their income tax returns?

"A. The company's?

"Q. Yes.

"A. Yes; I was familiar with it.

"Q. Were you familiar in a general way with the expenses of the company?

"A. Yes.

"Q. Including the compensation of officers and employees?

"A. Yes.

"Q. Can you state whether the Viscose Company in 1922 made any deduction in its return for salary or compensation paid to you other than that which you reported in your return?

"A. No; it did not.

"Q. Are we to understand, then, that the Viscose Company made no deduction by reason of the value of this stock over and above $100?

"A. It did not. May I add, this was increased capital I purchased. You see, we increased our capital for these shares I purchased, you see.

"Mr. SHERIFF. I move that the last portion of the answer be stricken out as not responsive.

"Q. Do you now regard any excess in value of the stock above $100 in 1922 as having been compensation to you for services in that year?

"Mr. JACKSON. That is objected to on the ground that the terms of the purchase of shares of stock are evidenced by a con-

77 tract which has been put in evidence showing the consideration received by the company and the consideration which it exacted from Mr. Salvage.

"A. I regarded that I was entitled to it at the beginning of 1922.

"Q. And why do you say the beginning of 1922?

"A. Because that is when I acquired the stock.

"Q. Do you now regard it as compensation for services rendered prior to 1922?

"A. I just feel that I made a bargain with the company in 1922, and that was closed so far as I was concerned.

"Q. Well, now, going back to 1922, with respect to this so-called 'bargain', did you at that time regard this excess in value of stock over $100 as compensation to be paid by the company to you for services rendered to the company?

"Mr. JACKSON. I again object on the ground that the terms of purchase are expressed in the contract of December 30, 1922, which is in evidence as Exhibit 2, and which governs the transaction.

"A. My answer is I regarded my value to the company at the beginning of 1922 as sufficient worth to the company to sell me those shares at $100.

"Q. And did you regard this excess of value as compensation for services?

"A. Previous services.

"Q. And by that you mean what?

"A. 1920, 1921. May I explain to you this? In the beginning of 1920 the shareholders offered to double my interest in the profits and thought I had taken it. I never did. I never took any
78 increased compensation at all. And after it had gone on two or three years this was brought to their attention, and to reimburse me, or give back value for what I had given they sold me these shares at $100 each.

"Q. You considered, then, at that time that they were giving you this special price as compensation for your services?

"A. I felt they owed it to me.

"Q. Well, can you say now why you did not report or make any mention of that in your 1922 return?

A. I have always made my returns on the basis of cash received.

"Q. Then, if the company had given you any property instead of cash, you would not have reported the value of that as income or compensation for services?

"A. Well, what property?

"Mr. JACKSON. I object to that as an assumption as to what he would or would not have done, and it is entirely incompetent and irrelevant, not a transaction which occurred.

"A. Well, my answer is I don't know what property they could give me which would have been an asset.

"Q. Do you now regard that difference in value as compensation for services?

"A. I do not. I feel I made a deal with the company and that ended it.

"Q. Did you think the deal was made in view of services rendered to the company?

"A. I felt at the time of the consummation of the deal that I was worth more to the company.

* * * * * * *

79 "Q. When did you first determine to treat the difference in value of the stock above $100 as compensation for services rendered at any time to the company?

"A. I felt that if that stock should become worth much more it was entirely due to my own effort.

"Q. And when did that thought first occur?

"A. Probably about 1920.

"Q. And in 1922, did you in any way regard your so-called bargain or agreement to acquire this stock as compensation for services?

"A. No; I felt I was entitled to it.

"Q. For what reason?

"A. For the reason I would have—if I had not gotten it—I would have asked for an increased salary.

"Q. Then, you felt in 1922 that as long as you had gotten it that you had been given adequate compensation?

"A. You are asking me difficult questions because I will say I voluntarily reduced my salary from the company very materially about two or three years ago; not that I thought I was worth less but I did it in keeping with the times.

"Q. Why was there a provision in the contract, Exhibit 2, whereby the company might redeem certain portions of that stock from the years 1923 to 1927?

"A. Because the company felt that it would not wish to sell me that stock at $100 a share unless I remained in the employ of the company.

"Q. You mean, then, that was their way of assuring you employment until 1927?

"A. Yes.

"Q. And why were you willing to give that option or those options on that stock?

"A. Because I was so married to and interested in the company I wished to remain, and accepted these terms.

80 "Q. You regarded the stock in part anyway as compensation, did you not?

"A. I regarded it as giving me an increased investment and interest in the business.

"Q. If the options had been exercised by the company your investment would, of course, correspondingly have been decreased, would it not?

"A. Yes, but I would have had to have taken the initiative in the thing by getting out of the company.

"Q. Do I understand the company never exercised that option or any of those options to repurchase?

"A. No. The company could not."

Salvage stated that his salary in 1921 in addition to other compensation for services was $10,000 or $12,000 a year. He received other compensation besides salary. The compensation which Salvage received from the Viscose Company in 1921 was under contract introduced as Exhibit 5. This was the only compensation that Salvage received from the Viscose Company.

On page 47 of the deposition, the following appears:

"Q. So I am correct in understanding that the only compensation received by you, paid to you by the Viscose Company in 1922, was that covered by this contract, Exhibit 5?

"A. Yes.

"Q. Now, can you point out in this contract any reference to this sale of stock to you at a figure of $100?

"A. I think that was a separate contract, a separate agreement, wasn't it?

"Q. My question is whether there is anything in that contract of January 2, 1922, Exhibit 5, concerning the sale of stock to you?

"Mr. JACKSON. The sale wasn't made until nearly twelve months later.

81 "The WITNESS. No; there is nothing in this contract that I see. It permits me to be employed by another company at a salary and commission, and that is all; and, of course, the salary and commission from the other company was returned in my income-tax return. No; there is nothing in here relating to the share contract."

Salvage never filed any amended income-tax returns for the years 1922 to 1927, inclusive.

On page 49 of the deposition the following appears:

"Q. Can you tell us whether there is any minute authorizing the sale of this stock to you at $100 a share, in consideration for your services?

"A. No; I do not recall that. My recollection is that there is a minute (dated December 15, 1922) authorizing the increase of capital by $400,000 par value.

* * * * * * *

"The WITNESS. My answer would be that the Board of Directors of the Viscose Company were authorized to sell 4,000 shares of new stock, representing the proposed increase of capital stock of the company to the following-named persons: 2,500 shares to C. A. Ernst and 1,500 shares to S. A. Salvage."

Salvage was a director and attended stockholders' meetings. On page 51 of the deposition the following appears:

"Q. Can you state whether or not the directors in 1922
82 passed any minute authorizing this sale to you of the stock in consideration for your services?

"A. No.

"Q. They did not pass such a minute?

"A. No; there is nothing in connection with compensation for services. The directors of the Viscose Company held a meeting on the 15th of December and resolved that in the opinion of the board of directors of this company the four thousand shares of new stock, representing the proposed increase of the capital stock of this company, shall be sold at par to the following-named persons or their nominees: 2,500 shares to C. A. Ernst and 1,500 shares to S. A. Salvage.

"Q. This is taken from what?

"A. That is taken from a minute of the board of directors of the Viscose Company held on December 15, 1922.

"Q. Well, that is the same direction, then, as was contained in the minutes of the stockholders' meeting?

"A. Yes.

"Q. But no reference is made in there to compensation for services?
"A. None at all."

On page 52 of the deposition the following appears:

"Q. Was your compensation 1922, under your agreement of January 1922, in any way reduced by reason of the sale to you of the stock?
"A. No.
"Q. Mr. Salvage, when did you first decide to treat this excess in value over $100 as compensation?
"A. I don't think I ever regarded it as compensation. I regarded it as a transaction whereby I bought something cheap.

"Redirect examination by Mr. JACKSON:

"In 1922 each stockholder of the Viscose Company was
83 either connected with the company as an official or was a member of the family of one of the company's officials. Salvage was elected vice president in 1916 and president in 1925. Subsequent to Salvage's purchase in December 1922 of 1,500 shares of stock of the Viscose Company, Salvage purchased all of Dr. Ernst's common stock of the American Viscose Company for the company and paid $172.50 per share. This purchase was made in 1928, which was after Dr. Ernst left the company and after Salvage had been elected president."

On page 54 of the deposition, the following appears:

"Q. Mr. Salvage, when you filed your 1922 income-tax return, did you feel that in that year you had received any property of value or taxable income which was not included in your 1922 return?
"A. No."

On November 2, 1933, while the deposition of Samuel A. Salvage was being taken, the following stipulation was entered into between counsel for the petitioner and for the respondent:

Stipulation

"It is stipulated between counsel that the following are correct transcripts of the stockholders' meeting of the Viscose Company held December 15, 1922, and of the directors' meeting held the same date:

"'A Special Meeting of the stockholders of The Viscose Company was held at the general office of the Company, Marcus Hook, Pennsylvania, on the 15th day of December 1922, at 11:45 o'clock A. M.,
pursuant to the following resolutions adopted by the Board of
84 Directors of this Company at a meeting held at the general office of the Company on the 15th day of December 1922, at 11:30 o'clock A. M., the notice of this Meeting by publication required to be given by the Constitution and Laws of this Commonwealth, as well as the notice required by the By-Laws of this Company having been waived by the unanimous consent of the stockholders, in accordance with the waiver of notice hereafter set out.

"'Resolved, that the Capital Stock of this Company be increased from $10,000,000.00 to $10,400,000.00.

"'Resolved, that a Meeting of the Stockholders be called to convene at the general office of this Company on the 15th day of December, A. D. 1922, to take action on approval or disapproval of the proposed increase of the Capital Stock of this Company, the notice by publication required to be given by the Constitution and Laws of this Commonwealth having been waived by the unanimous consent of the Stockholders.

"'Resolved, that Messrs. Ernst, Salvage, and Dickson, Stockholders of this Company, be and they are hereby appointed Judges to conduct an election by the Stockholders thereof for or against an increase of the Capital Stock of this Company, to be held at the general office of this Company on the 15th day of December 1922, at 11:45 o'clock A. M.

85 "'Resolved, that the Secretary be and is hereby directed to furnish the Judges at said Meeting with a statement of the amount of the Capital Stock of this Company, the names of the persons or bodies corporate holding the same and the number of shares by each respectively held, which statement should be signed by him, with an affidavit thereto annexed that the same is true and correct to the best of his knowledge and belief.

"'Resolved, that in the opinion of the Board of Directors of this Company, the 4,000 shares of new stock representing the proposed increase of the Capital Stock of this Company shall be sold at par to the following-named persons or to their nominees:

"'2,500 shares to C. A. Ernst and 1,500 shares to S. A. Salvage.

* * * * * * * * *

"'(Waiver of notice incorporated in original minutes, but omitted here.)

"'Mr. Nelson S. Spencer was called to the chair and Mr. Hendrixson, Secretary of the Company, was appointed to act as Secretary of the Meeting.

"'The Secretary read the Minutes of the Directors' Meeting heretofore held on this date.

"'Waivers of notice of this Meeting signed by all of the Stockholders were read and ordered to be filed in the papers of the Meeting.

86 "'The Chairman stated that the Meeting was called for the purpose of taking action on the approval or disapproval of the proposed increase of the Capital Stock of the Company from $10,000,000.00 to $10,400,000.00.

"'The following resolution being offered, it was on motion resolved to proceed to a stock vote by ballot thereon.

"'Resolved, that the Board of Directors of this Company be, and they are hereby authorized to increase the Capital Stock of the Company from $10,000,000.00 to $10,400,000.00.

"'The judges appointed by the Board of Directors, namely, Messrs. Ernst, Salvage, and Dickson, respectively, took and subscribed the oath that they would well and truly conduct the election for or against the proposed increase of the Capital Stock of the Company.

"'The Secretary of the Company, in accordance with a resolution, furnished to the Judges of election a statement of the amount of the Capital Stock of the Company, with the names of the persons or bodies corporate holding the same and the number of shares by each respectively held, which statement was signed by the Secretary with his affidavit thereto attached that the same is true and correct to the best of his knowledge and belief.

"'A vote by ballot was then taken on said resolution, each ballot having endorsed thereon the number of shares thereby represented, and the Judges having counted the ballots, declared that the holders of 100,000 shares had voted in favor of said increase and that the holders of no shares had voted against said increase, and that, therefore, the persons or bodies corporate holding the larger amount in value of the Capital Stock of the Company had assented to such increase.

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"'Duplicate returns of said election to increase the Capital Stock were made out by the Judges and subscribed and delivered to the Chairman.

"'The following resolution was thereupon offered and was unanimously adopted:

"'Resolved: That the Stockholders do hereby sanction the sale by the Board of Directors of the 4,000 shares, representing the new stock to be issued to the following-named persons or to their nominees:

"'2,500 shares thereof at par to Charles A. Ernst and 1,500 shares thereof at par to Samuel A. Salvage.

"'On motion adjourned.

"'(Blank) *Secretary.*'

"A Special Meeting of the Board of Directors of The Viscose Company was held at the principal office of the Company at Marcus Hook, Pennsylvania, on the 15th day of December 1922 at 11:30 o'clock A. M., pursuant to the following waiver of notice signed by all of the Directors:

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"'WAIVER OF NOTICE

"'The undersigned, Directors of The Viscose Company, do hereby waive notice of a special meeting of the Directors of said Company to be held at the principal office of The Viscose Company, Marcus Hook, Penna., on December 15th, 1922, at 11:30 o'clock A. M., for the purpose of approving or disapproving an increase of the Capital Stock of the Company from $10,000,000.00 to $10,400,000.00, and of determining when and upon what terms such stock shall be issued.

"'There were present: Messrs. Nelson S. Spencer, Arthur G. Dickson, Samuel A. Salvage, Charles A. Ernst, being a majority and quorum of the Directors of the Company.

"'The Chairman of the Board, Mr. Nelson S. Spencer, occupied the chair.

"'The President stated the above waiver of notice set out the purpose for which this meeting has been called.

"'Whereupon, on motion, it was unanimously

"'Resolved: That the Capital Stock of this Company be increased from $10,000,000.00 to $10,400,000.00.

"'Resolved: That a meeting of the Stockholders be called
89 to convene at the general office of this Company on the 15th day of December, A. D. 1922, to take action on approval or disapproval of the proposed increase of the Capital Stock of this Company, the notice by publication required to be given by the Constitution and Laws of this Commonwealth having been waived by the unanimous consent of the Stockholders.

"'Resolved: That Messrs. Ernst, Salvage, and Dickson, Stockholders of this Company, be and they are hereby appointed Judges to conduct an election by the Stockholders thereof for or against an increase of the Capital Stock of this Company, to be held at the general Office of this Company on the 15th day of December 1922, at 11:45 o'clock A. M.

"'Resolved: That the Secretary be and is hereby directed to furnish the Judges at said Meeting with a statement of the amount of the capital stock of this Company, the names of the persons or bodies corporate holding the same and the number of shares by each respectively held, which statement should be signed by him, with an affidavit thereto annexed that the same is true and correct to the best of his knowledge and belief.

"'Resolved: That, in the opinion of the Board of Directors of this Company, the 4,000 shares of new stock, representing the proposed increase of the capital stock of this Company, shall be
90 sold at par to the following-named persons or to their nominees:

"'2,500 shares to C. A. Ernst and 1,500 shares to S. A. Salvage.

"'On motion, adjourned to 12 o'clock noon.

"'(Blank) *Secretary.*'

"'Adjourned Meeting of the Board of Directors of The Viscose Company held on the 15th day of December 1922, at 12 o'clock noon, at Marcus Hook, Pennsylvania.

"'Present: Nelson S. Spencer, Arthur G. Dickson, Samuel A. Salvage, Charles A. Ernst, being a majority and quorum of the Directors of the Company.

"'The President reported that the Stockholders at their special meeting held this date had unanimously voted in favor of a proposed increase of the Capital Stock from $10,000,000.00 to $10,400,000.00,

and had sanctioned the sale of the new shares at par to Messrs. Ernst and Salvage or to their nominees.

"'On motion duly made, seconded and carried, it was

"'Resolved, that the authorized Capital stock of this Company be increased from $10,000,000.00 to $10,400,000.00.

91 "'Resolved, that the 4,000 shares of new stock to be sold at par to the following-named persons or to their nominees:

"'2,500 shares thereof to Charles A. Ernst and 1,500 shares thereof to Samuel A. Salvage.

"'Resolved, that the Officers be, and they are hereby, authorized and directed in due course to make all proper returns in respect of such increase.

"'Resolved, that the Company enter into a new service agreement with Mr. C. A. Ernst and Mr. S. A. Salvage dating as from January 1st, 1922, for a period of six years, in the form presented to the Meeting by Mr. Dickson, the Company's Counsel.

"'On motion, adjourned.

(Blank) "'*Secretary.*'"'

At the hearing held before Hon. Charles P. Smith on December 7, 1933, counsel for petitioner stated that the petitioner had filed claim for the refund of $63,750 of the tax paid by him for 1929 upon the theory that the basis for the determination of the gain realized from the redemption of the shares of preferred stock was the fair market value of the shares of stock of The Viscose Company at the time he purchased 1,500 shares on December 30, 1922. Counsel for the petitioner stated:

"Now, as an alternative point, the petitioner presents this:

92 In connection with the apportionment and, of course, for the purpose of apportionment, the Commissioner used the value for the old Viscose Company stock, of $1,164.70 a share, which value was accepted.

"The petitioner contends that if a value could be arrived at, and if that value was $1,164.70 a share, it was very obvious that in buying that stock at $100 a share he bought it at a figure substantially less than its real value. He was an employee of the company. The purchase was directly tied up with the employment. His testimony shows that he regarded it as remuneration for that purpose, and then he should not have paid any tax in 1929, and that is the basis of the claim for refund. I wish, of course, your Honor, to make it clear that that point has only been presented by reason of the position taken by the Commissioner."

The claim for refund referred to, which was dated March 8, 1932, was received in evidence at the hearing on December 7, 1933, as Petitioner's Exhibit 1.

93 *Stipulation and order approving and settling statement of the evidence*

It is hereby agreed between the parties hereto through their respective attorneys of record that the foregoing is all of the material evidence adduced at the hearing before the Board of Tax Appeals and the same is hereby approved.

GEORGE B. BROOKS,
Attorney for Petitioner on Review.
ROBERT H. JACKSON,
Assistant General Counsel for the Bureau of Internal Revenue.

The foregoing is all of the material evidence adduced at the hearing and in order that the same may be preserved and made a part of the record, this statement of evidence is duly approved and settled this 22nd day of August, 1934.

CHARLES P. SMITH,
Member, United States Board of Tax Appeals.

JDH/nvc 8/17/34

94 PETITIONER'S EXHIBIT No. 1

Consulate-General of the United States of America for Great Britain & Ireland at London

I, Herbert D. Jameson, Deputy Consul-General of the United States of America at London, England, do hereby make known and certify to all whom it may concern that John Edward Newton, who hath signed the annexed Certificate, is a Notary Public, duly admitted and sworn, and practising in the city of London, aforesaid, and that to all acts by him so done full faith and credit are and ought to be given in Judicature and thereout.

In Testimony Whereof, I have hereunto set my hand and affixed my seal of Office at London aforesaid, this Second day of July, in the year of our Lord One Thousand Nine Hundred and Fourteen.

[SEAL] HERBERT D. JAMESON,
Deputy Consul-General.
DEC. 23, 1926.

UNITED KINGDOM OF GREAT BRITAIN AND IRELAND,
England, City of London, ss:

I, John Edward Newton, Notary Public of the City of London, by Royal Authority duly admitted, and sworn, and practising in said City, Do Hereby Certify unto all whom it shall or may concern
95 that on the day of the date hereof before me personally came and appeared Thomas Paul Latham, Henry George Rushbrook, and Ernest Kettle, to me personally known, who being by me each duly sworn did severally depose and say: That they resided in London, that they are respectively two of the Directors and the

Secretary of Lustre Fibres, Limited, the Corporation described in and which executed the annexed Instrument, that they knew the Seal of said Corporation, that the Seal affixed to said Instrument was such Corporate Seal, that it was so affixed by order of the Board of Directors of said Corporation and that they signed their names thereto by like order.

Whereof an Act being required I, the said Notary, have granted these Presents under my Notarial Firm and Seal of Office, to serve and avail as occasion shall or may require. Done and Passed in London this Second day of July, One thousand nine hundred and fourteen.

In testimonium—Veritatis.

[SEAL]

J. EDW. NEWTON,
Notary Public, London.

To Whom These Presents Shall Come Lustre Fibres Limited duly incorporated under the laws of the United Kingdom of Great Britain and Ireland, whose registered office is at No. 19, Aldermanbury in the City of London, England, send greeting

Whereas the said Lustre Fibres Limited (hereinafter called
96 "the Company") was formed for the purpose (inter alia) of carrying on business in the United States of America as importers and sellers of filaments, threads, or fibres usually known or referred to and hereinafter described as "Artificial Silk" and as Agents fo the sale of Artificial Silk

And Whereas it is intended that Samuel Agar Salvage, of No. 445 Broome Street, in the City of New York, State of New York, shall in the said United States have charge of such business and the Company are desirous of appointing him the Attorney of the Company for the purposes thereof as hereinafter appearing

Now These Presents Witness that the Company doth hereby appoint the said Samuel Agar Salvage (hereinafter called "the said Attorney") the Attorney of the Company in the name or on behalf of the Company in the said United States and not elsewhere to do or execute all or any of the acts and things hereinafter mentioned, that is to say

1. To direct, superintend, carry on, manage, and conduct the business assets and property of the Company in the said United States And for the purposes aforesaid

2. To use and dispose of all the stock, money, and effects of the Company in the said United States which now are or shall hereafter be employed in or be due or owing in respect of the said business.

3. To continue the employment of such clerks, agents, and other persons as are now employed in or about the said business
97 and from time to time to hire or employ such other persons and at such remuneration by way of salary as the said Attorney shall think proper, and subject to any existing agreements, to dismiss any clerks, agents, and other persons from time to time em-

ployed and appoint another or others and from time to time to increase or diminish the number of persons employed.

4. In the name and on behalf of the Company to draw, endorse, negotiate, or deliver any bills of exchange, promissory notes, cheques, drafts, orders for payment or delivery of money, securities, artificial silk and other goods or effects, bills of lading and other negotiable or mercantile instruments or securities deemed necessary or proper in relation to the business or affairs of the Company in respect of the business aforesaid.

5. To adjust and settle all accounts and transactions, and compromise or compound any debts or claims which may be or become owing by or to the Company in relation to the said business.

6. To demand, sue for, enforce payment of, and receive all monies, securities for money, debts, artificial silk and other goods, chattels and personal estate of or to which the Company is now or may hereafter become possessed or entitled or which are or may become due, owing, payable, or transferable to the Company in relation to the said business.

7. To receive and give effectual receipts and discharges for all monies, securities for money debts, artificial silk and other
98 goods, chattels, and personal estate which shall come to the hands of the said Attorney under or by virtue of the powers herein contained, which receipts shall exonerate the person or persons, corporation or corporations paying or delivering the same from seeing to the application thereof, or being responsible for the loss or misapplication thereof.

8. To open an account or accounts in the name of the Company with any Banker or Banking Corporation in the State of New York on such terms and conditions in all respects as the said Attorney shall think expedient and deposit any monies received for and on behalf of the Company and with such Banker or Banking Corporation to the credit of the said account or accounts, and from time to time as such Attorney personally or by some person duly authorised in writing by him to withdraw all or any of the monies standing to the credit of the same account or accounts, and to employ or apply all or any part of the monies so withdrawn for the purposes aforesaid as the said Attorney may think fit.

9. To commence, prosecute, enforce, defend, answer, or oppose all actions and other legal proceedings and demands attaching to any of the matters aforesaid in relation to the said business, and if thought fit, to compromise, refer to arbitration, abandon, submit to judgment, or become nonsuited in any such action or proceeding as aforesaid.

10. To adjust, settle, compromise, or submit to arbitration any accounts, debts, claims, demands, disputes, and matters touching any of the matters aforesaid in relation to the said business.

99 11. To compound and accept payment in lieu of and in satisfaction of the whole or to compromise any debt or sum of money now or hereafter owing or payable to the Company or any

other claim or demand which the Company has or may have or to grant any extension of time for the payment or satisfaction thereof on such terms as may be deemed proper either with or without taking security for the same or otherwise to act with respect thereto as the said Attorney may deem expedient.

12. To consent, enter into, acknowledge, perfect, sign, and do all such agreements, instruments, and acts and things as may be required by or for the Department of Customs or any other Government Department in the said United States or shall be deemed proper for or in relation to all or any of the purposes or matters aforesaid in relation to the said business.

13. And generally in the said United States to act as the Attorney or Agent of the Company in relation to any of the matters aforesaid and for or on behalf of the Company to do all acts and things hereinbefore mentioned as fully and effectually in all respects as the Company itself could do.

14. And the Company hereby ratifies and confirms and agrees to ratify and confirm whatsoever the said Attorney shall do or purport to do under or by virtue of these presents.

15. And the said Attorney is hereby authorized and empow-
100 ered to acknowledge in the name of the Company as the Company's act and deed this Power of Attorney and to register and record the same when and wherever required and to procure to be done any and every other act and deed whatsoever which may be in any wise requisite and proper for authenticating or giving full effect to this Power according to the laws and usages of the said United States.

In Witness Whereof Lustre Fibres, Limited, hereunto causes its Common Seal to be affixed this second day of July, One thousand nine hundred and fourteen.

The Common Seal of Lustre Fibres, Limited, was hereto affixed in the presence of—

T. P. LATHAM,
H. GEO. RUSHBROOK,
Directors.
E. KETTLE, *Secretary.*

Witness:
J. EDW. NEWTON,
Notary Public, London.

Dated the 2nd day of July 1914.

Power of attorneys from Lustres Fibres, Limited, to Mr. S. A. Salvage.

101 PETITIONER'S EXHIBIT No. 2

Memorandum of Agreement, made and concluded this 30th day of December 1922, by and between The Viscose Company, a corporation of the State of Pennsylvania, hereinafter called "The Com-

pany", of the one part, and Samuel Agar Salvage, of the City of New York, hereinafter called "Salvage", of the other part.

Whereas the Company has, in consideration of the agreement of Salvage, hereinafter set forth, sold to him or his nominees 1,500 shares of its capital stock at less than their real value, namely, at par, and has issued certificates therefor as directed by Salvage

Now This Agreement Witnesseth:

1. That Salvage does hereby agree to and with the Company that the said Company shall have the right to repurchase from him or his nominees, and he does hereby undertake, on behalf of himself, his heirs, executors, administrators, and assigns, to procure for and deliver to the said Company for repurchase at par, the following proportions of the said 1,500 shares:

At any time during the year 1923, five-sevenths;
At any time during the year 1924, four-sevenths;
At any time during the year 1925, three-sevenths;
At any time during the years 1926, two-sevenths;
At any time during the year 1927, one-seventh of the said 1,500 shares.

102 2. Salvage does further hereby agree to and with the Company that he will not at any time during his life, in any part of the United States of America, except the States of Utah, Nevada, and New Mexico, Canada, the United Kingdom of Great Britain, or the Free State of Ireland, directly or indirectly, alone or in partnership, or as a Director or other Officer of a corporate body, or as an Agent or otherwise howsoever, carry on or be engaged in any trade, business, or occupation for the manufacture or production of artificial silk or Viscose, or of any material, goods, or articles from Viscose in any form, nor enter into the service of or, directly or indirectly, assist or act for any person, firm, or corporation in such trade or business or manufacturing or contemplating the manufacture of artificial silk, without the express written consent of the said Company.

In Witness Whereof, The Viscose Company has caused its corporate seal to be hereunto affixed and the said Samuel Agar Salvage has hereunto set his hand and seal the day and year first above written.

THE VISCOSE COMPANY,
By NELSON S. SPENCER,
Chairman of the Board of Directors.

A. G. DICKSON.
Attest:

CHAS. E. HENDRIXSON,
Secretary.

SAMUEL AGAR SALVAGE. [SEAL]

103 PETITIONER'S EXHIBIT No. 8

[Copy]

DECEMBER 30TH, 1922.

THE VISCOSE COMPANY,
Marcus Hook, Penna.

GENTLEMEN: Referring to my purchase from you of 1,500 shares of your capital stock at par and to my agreement to procure for you for repurchase, certain portions thereof during the years 1923 to 1927, inclusive, I beg to say that I desire to exchange such shares of your stock for shares of American Viscose Corporation of Delaware at the rate of one share of your stock for four shares of the preferred and five shares of the common stock of said Delaware Company. If you will consent to my making such exchange, I will deliver to you certificates for the shares of the Delaware Company, which I will receive in exchange for the shares of your Company which you are entitled under my agreement to repurchase, and I agree that such shares of the stock of the Delaware Company shall be in all respects substituted for the shares of your own stock, to which said agreement applied, each four shares of preferrd stock and five shares of common stock of said Delaware Company to take the place of one share of your capital stock.

This letter and your written assent thereto shall constitute the contract.

Very truly yours,

SAMUEL A. SALVAGE.

104 PETITIONER'S EXHIBIT No. 4

THE VISCOSE CO.,
Marcus Hook, Pa., December 30, 1922.

Mr. S. A. SALVAGE,
171 Madison Avenue, New York City.

DEAR SIR: We acknowledge receipt of your letter of December 30th, 1922, in reference to proposed exchange by you of shares of our capital stock for shares of preferred and common stock of American Viscose Corporation of Delaware, and we hereby consent to such exchange and to the substitution of such preferred and common shares of the Delaware Company in place of the shares of our capital stock covered by your agreement with us of December 30th, 1922. We also agree to release and return to you at the end of the year 1923, one-fifth of the shares so deposited with us, provided that during said year 1923 we have not exercised our right to purchase, and we similarly agree, at the end of each of the years 1924, 1925, 1926, and 1927, to make release and return to you one-fifth of said shares, upon the same proviso.

Very truly yours,

THE VISCOSE COMPANY,
By NELSON S. SPENCER,
Chairman of the Board of Directors.

105 PETITIONER'S EXHIBIT No. 5

Memorandum of Agreement made and concluded this Second day of January 1922 between The Viscose Company, a corporation of the State of Pennsylvania, hereinafter called "The Company", of the one part, and Samuel Agar Salvage, of the City of New York, hereinafter called "Salvage", of the other part,

Witnesseth:

1. Salvage shall, for the period of six (6) years from the first day of January 1922, inclusive, act as Manager in New York of so much of the Company's business as relates to the sale and disposal in the United States of Viscose and Filamentary and other material, goods, and articles manufactured by the Company.

2. Except as next hereinafter provided, Salvage shall during the said period, devote his whole time, energies, and attention to the business, as aforesaid, of the Company, and shall not hold or be engaged in any office or employment with or on behalf of any other Company, firm, or person, or be engaged in or carry on any other business.

3. Salvage shall be at liberty to give such part of his time and attention, as he may at his absolute discretion think necessary, to the business of Lustre Fibres, Limited, under an agreement proposed to be entered into between that Company and him, and to be and to act as a Director of The Viscose Company, and to retain for
106 his own benefit all fees and moneys payable by either Company to him for his services.

4. Salvage shall in all respects conform to and carry out the instructions from time to time given by the Company or its Board of Directors, and shall prepare and furnish all such reports and accounts in relation to the Company's business, and give all such information in reference to such business as may from time to time be required by them respectively, and he shall well and faithfully serve the Company and use his utmost endeavors to promote the interests thereof.

5. The Company will pay to Salvage as remuneration a salary at the rate of Ten thousand dollars ($10,000) per annum for the year 1922, and Twenty-one thousand four hundred dollars ($21,400) per annum for the years 1923, 1924, 1925, 1926, and 1927, payable by equal monthly instalments on the last day of each calendar month; and a commission at the rate of two-thirds of one percent per annum on the net profits in each year of his engagement derived by the Company from its manufacture in the said United States of Viscose and Filamentary and other material, goods and articles, calculated on the same basis as has been customary between the parties hereto.

6. The certificate of the Auditors for the time being of the Company as to the amounts of the said net profits and commission shall be binding and conclusive on each of the parties hereto, and the said commission shall be paid in accordance with such cer-

107 tificate within three months after the thirty-first day of December of the year in respect of which the same is payable.

7. If, by reason of ill health, accident or otherwise, Salvage shall be incapacitated from properly attending to business for three consecutive calendar months, the Company may determine his engagement by three calendar months' notice in writing.

8. If Salvage shall become bankrupt or insolvent, or if he shall wilfully neglect or refuse to perform or observe any of the duties or obligations devolving upon him under this agreement, or shall otherwise commit a breach of any of the stipulations hereof, the Company may determine his engagement forthwith.

9. If any dispute or difference shall arise between the parties hereto, or their assigns or personal representatives, as to this agreement or the construction hereof, or of any clause herein contained, or the rights, duties or liabilities or either party hereunder, the same shall be referred in the said United States to three disinterested persons as Arbitrators; one to be appointed by each party, and the third by the two first appointed before they enter on the arbitration. The decision of the two first appointed, or, if they disagree, of any two of the three shall be final and binding on the parties hereto, and each of such parties shall pay one-half the expense of the arbitration.

10. Any notice hereunder may be served upon the Company
108 by leaving the same for or sending the same by registered post to the Company at its registered office for the time being, and upon Salvage by leaving the same for or sending the same by registered post to Salvage at his usual or last known place of abode or business, and any notice to Salvage shall be sufficient if signed by one Director of the Company. Every notice shall be deemed to have been served on the day of its being so left or on the day when in the ordinary course of post it would be delivered as the case may be.

11. The Company shall be entitled at any time during the said engagement to sell or dispose of, assign, and transfer this agreement, and all the Company's rights and liabilities thereunder to any existing or future Company or individuals, either alone or jointly with the Company, and to enter into any contract or contracts, and carry out any which may now or hereafter exist for or in relation to or in connection with any sale, disposal, assignment or transfer on the reconstruction of the Company or otherwise howsoever. Provided always that any such sale, disposition, assignment or transfer as aforesaid shall not take effect unless and until the assignee or transferee, as the case may be, shall, without expense to Mr. Salvage, have delivered to him a valid agreement with him to carry into full effect this agreement so far as the same may remain to be performed by the Company, and unless and until all moneys payable hereunder to Salvage to the date of such delivery shall have been paid or sufficiently secured.

In Witness Whereof, the Company hereunto causes its Com-
109 mon or Corporate Seal to be affixed, and Salvage hereunto sets his hand and seal the day and year above written.

SAMUEL AGAR SALVAGE.

The Common or Corporate Seal of The Viscose Company was hereunto affixed in the presence of A. G. Dickson, Nelson S. Spencer.

Signed, Sealed, and Delivered by the above-named Samuel Agar Salvage in the presence of A. G. Dickson, Nelson S. Spencer.

Between The Viscose Company and Samuel Agar Salvage

Agreement of service

Dated:

DICKSON, REITLER & MCCOUCH,
Attorneys at Law,
No. 750 Bullitt Building, Philadelphia.

110 PETITIONER'S EXHIBIT NO. 6 FOR IDENTIFICATION

Memorandum of agreement made and concluded this second day of Jan. 1922, between The Viscose Company, a corporation of the State of Pennsylvania, hereinafter called "The Company", of the one part, and Charles Augustus Ernst, of Ridley Park, Delaware County, Pennsylvania, hereinafter called "Ernst", of the other part,

Witnesseth:

1. Ernst shall, for the period of six (6) years from the first day of January 1922, inclusive, act as Manager of all of the Company works in the United States of America.

2. Ernst shall at all times during the ordinary hours of business of the Company employ himself in the conduct and transaction of all matters and things connected with his said employment which shall fall within his duties in the capacity aforesaid or which the Company may from time to time assign to him as the same respectively may from time to time by defined by the Company, and shall exercise all the powers from time to time vested in him by the Company.

3. Ernst shall at all times whilst in the said employment have regard to and observe and comply with all reasonable regulations and directions which may from time to time be made or given by the Company in relation to the Company's business and the management of its affairs, his duties as Manager and otherwise.

4. Ernest shall not whilst in the employment of the Com-
111 pany or at any time thereafter without the Company's previous consent, divulge to any person, firm, or corporation, whatsoever, information as to any process, machinery, materials, chemicals, business concerns, and affairs of the Company or used or intended to be used by the Company which he now possesses or which hereafter whilst in the said employment he may obtain or acquire and for the

purpose of this Agreement all information which he now possesses or which hereafter whilst in such employment he may obtain or acquire as to any of the said processes, machinery, materials, chemicals, business concerns, and affairs shall be deemed to have been obtained and acquired whilst in the employment of the Company. Ernst shall at all times hereafter keep secret all information in reference to the matters aforesaid and every of them which he now possesses or which at any time hereafter whilst in such employment he may obtain or acquire.

5. Ernst shall at all times during the employment aforesaid diligently and faithfully and to the best of his skill and ability endeavor to discover and invent and procure information as to or respecting improvements and the defects in the processes, machinery, materials, and chemicals aforesaid and the remedies for such defects and as to and respecting new processes, machinery, materials, and chemicals suitable for use in the Company's business. If any such improvement, remedy, discovery, invention or information is now known to Ernst or at any time hereafter whilst in the Company's employment shall become known to or made or obtained by him, he shall
112 forthwith communicate the same to the Company and he shall not whilst in the said employment or at any time thereafter without the Company's previous written consent, divulge the same to any person, firm or corporation.

6. All discoveries and inventions connected with the business of the Company made by Ernst while he is in the Company's employment, whether patented or protected or not, and all patents or other protections for or in respect of the same respectively, whether such patents or protections be obtained during or after such employment and the full benefit of the same discoveries, inventions, patents and protections shall belong to and shall be and shall remain the property of the Company absolutely, and Ernst shall at all times both during and after such employment, upon the request and at the expense of the Company, do whatever the Company reasonably requires for giving full effect to this clause, including all such things as may be necessary to enable the Company in the United States of America, Canada, or any other country, to apply for and obtain as and in such names and in such manner as may be required by the Company, such provisional or other protection or Letters Patent respectively, as the Company may desire, and shall when the same shall have been obtained forthwith when required assign the same to the Company or as the Company shall direct.

7. If Ernst shall at any time during the said employment know or make or believe that he knows of or has made any such improvement, remedy, discovery or invention as aforesaid, as shall forthwith communicate the same or his idea or ideas to the Company and to the extent and in the manner authorized by the Company and
113 no further, or otherwise he shall be at liberty to continue and carry out any experiments or work in connection with or for perfecting the same.

8. The Company will pay to Ernst as remuneration a salary at the rate of $17,000 per annum for the year 1922, payable by equal monthly instalments on the last day of each calendar month, and at the rate of $33,200 per annum for the years 1923, 1924, 1925, 1926, and 1927, payable in equal monthly instalments on the last day of each calendar month, and a commission at the rate of 1% per annum on the net profits and income of the Company in each year of his employment derived by the Company from the Company's manufactures, investments, and properties in the United States, calculated on the same basis as has been customary between the parties hereto. The said commission shall be payable yearly within two calendar months after the 31st day of December of the year for which the same shall be payable.

9. If required, a certificate of the Company's Auditors as to the amount payable for commisson shall be furnished, and the same shall be final and conclusive for all purposes, and Ernst shall not in connection with the amount so payable be entitled to require or to have inspection or copies of or extracts from or information in relation to the Company's accounts, books, documents, profits, receipts, payment, outgoing business or affairs, or to prescribe the mode in which any account shall be kept or how any moneys, matter, or thing shall be dealt with, or to interfere in any of the matters aforesaid in any way whatsoever.

114 10. If by reason of ill health, accident, or otherwise, Ernst shall be incapacitated from properly attending to business for three consecutive calendar months, the Company may determine his engagement by three calendar months' notice in writing.

11. If Ernst shall become bankrupt or insolvent, or if he shall wilfully neglect or refuse to perform or observe any of the duties of obligations devolving upon him under this agreement, or shall otherwise commit a breach of any of the stipulations hereof, the Company may determine his engagement forthwith.

12. Any such notice by the Company as in this Agreement mentioned shall be sufficient if it is signed by a Director of the Company and sent by post to the usual or last known place of abode of Ernst, and such notice if so sent shall be deemed to have been given at the expiration of twelve hours after it should have been received in the ordinary course of post.

13. If at any time during the said employment the Company shall sell or dispose of to any now existing or any future corporation or firm, or to any individuals exceeding two in number, the Company's Works and business or shall enter into any contract for any such sale or disposition or into voluntary liquidation or similar proceedings with a view to reconstruction, the Company shall be entitled to assign and transfer, and to contract to assign and transfer, this Agreement and all the Company's rights and liabilities accordingly, and from and after any such assignment and the transfer as aforesaid and such agreement and payment as hereinafter

115 respectively mentioned, this Agreement shall be read and construed in all respects as if the name of the Assignee or Transferee had been inserted in this Agreement throughout instead of the name of the Company, Provided always that any such assignment or transfer as aforesaid shall not take effect unless and until the Assignee or Transferee, as the case may be, shall without expense to Ernst have delivered to him a valid Agreement with him to carry into full effect this Agreement so far as the same may remain to be performed by the Company and unless and until all moneys payable hereunder to Ernst to the date of such delivery shall have been paid or sufficiently secured.

In Witness Whereof, The Viscose Company hereunto causes its Common Seal to be affixed and the said Charles Augustus Ernst hereunto sets his hand and seal the day and year first above written.

CHARLES AUGUSTUS ERNST.

The Common Seal of The Viscose Company above named was hereunto affixed in the presense of A. G. Dickson, Nelson S. Spencer.

Signed, Sealed, and Delivered by the above-named Charles Augustus Ernst in the presence of Edward Hopkinson, Jr., A. G. Dickson, Nelson S. Spencer.

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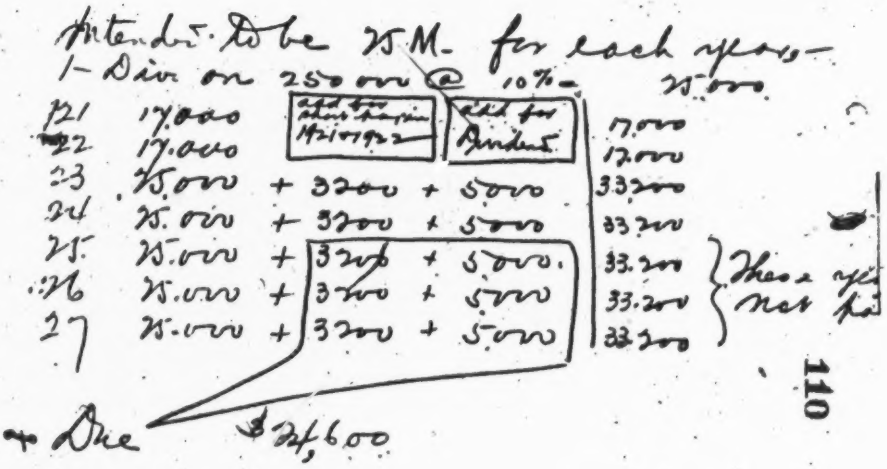

117 C. A. ERNST

v.

THE VISCOSE CO.

Service agreement Jan. 1/22 for 6 Years.

DICKSON, BEITLER & MCCOUCH,
Attorney at Law,
No. 750 Bullitt Building, Philadelphia.

PETITIONER'S EXHIBIT No. 7

Memorandum of Agreement made this 23d day of December, A. D. 1913, by and between Courtaulds, Limited, a corporation organized and existing under the laws of Great Britain, hereinafter called "first party", and American Viscose Company, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, hereinafter called "second party."

Whereas second party is engaged in manufacturing artificial
118 silk and in such business has found it expedient and profitable to make use of certain patents, improvements, and processes which were the property of Samuel Courtaulds & Company, Limited, but which by assignment and transfer passed as of January 1st, 1913, to and are now the property of said first party and

Whereas no payment has yet been made for such use for the year 1913, and

Whereas the parties hereto have agreed upon the terms hereinafter set forth as constituting a fair and equitable price for the sale and purchase of the license and rights hereinafter referred to.

Now This Agreement Witnesseth:

First. Courtaulds, Limited, will, subject to all existing rights (if any), sell, grant, convey, assign, transfer, and set over to second party the right, privilege, and license as from the said first day of January 1913 and thenceforth, during the years 1913, 1914, 1915, and 1916, to use in the United States all the patents, improvements, and processes which it now owns relating to the manufacture of artificial silk and, so far as it is able to do so, the right, privilege, and license to use in the United States such patents, improvements, and processes relating to the manufacture of artificial silk as first party owns in connection with others, whose consent thereto is or may be necessary.

Second: First party also agrees during the aforesaid period to
119 give to second party the fullest information and disclosure as to all machinery, processes, secret or otherwise, for or in reference to the manufacture of artificial silk and to extend to second party full inspection from time to time as desired of its several factories.

Third. Second party agrees that first party may during said period use all patents, improvements, and processes for the manufacture of artificial silk, which second party may discover, invent, obtain, or otherwise acquire and that during said period it will give to first party the fullest information and disclosure as to all machinery, processes, secret or otherwise, and extend to first party full inspection from time to time of its factories as may be desired.

Fourth. Second party further agrees that it will not assign without the consent of first party in writing first had and obtained any of the rights or privileges under this agreement and agrees that any assignment by operation of law or otherwise without such prior written consent by first party shall be void and second party further agrees to keep all information obtained by it under or in the exercise of the rights aforesaid absolutely secret, except only to the extent actually necessary in connection with the manufacture of artificial silk in the United States by the second party and not at any time during the aforesaid period or thereafter except for the purpose aforesaid to disclose the same to any person or corporation without such previous consent in writing of the first party.

Fifth. Second party agrees to pay to first party First: the sum of $2,000,000, as follows:

120 (a) $500,000 each on the last days of December of the years 1913, 1914, 1915, and 1916, except that the first of said payments shall be postponed until the consent of the stockholders of second party, authorizing an increase of its indebtedness has been given, said payments to be made in London, England, together with interest at the rate of six percent per annum on the amount from time to time remaining unpaid from January 1, 1913, payable semi-annually in London, England, on the last days of June and December in each of said years, and Secondly:

(b) A sum or sums equal to the percentages of the profits of its business hereinafter stated, as ascertained prior to the deduction of the said $2,000,000 or any part thereof or the interest thereon respectively, and if such payments should in any way be construed to be subject to the United States Income Tax and as said second party may be permitted by law to pay the same, second party agrees to make said payments free from any deduction for said tax:

For the year 1913, a sum equal to 18% per annum;
For the year 1914, a sum equal to 16% per annum;
For the year 1915, a sum equal to 14% per annum;
For the year 1916, a sum equal to 12% per annum.

Sixth. Second party further agreed that upon demand of
121 first party it will execute and deliver notes or debentures representing the payments to be made as hereinabove provided or such of them as may be required, said notes or debentures to bear date January 1st, 1913, and to take all such steps as it may be advised by counsel learned in the law are or shall be necessary

for making such notes or debentures valid and binding obligations of the second party.

For COURTAULDS, LIMITED,
(Signed) H. GEO. RUSHBROOK.
AMERICAN VISCOSE CO.,
(Signed) F. S. YOUNGHUSBAND,
Treasurer.

PETITIONER'S EXHIBIT No. 8

Memorandum of Agreement Made this 20th day of May 1915, by and between Courtaulds, Limited, a Corporation organized under the laws of Great Britain, hereinafter called Courtaulds, and which term wherever the context so admits or allows, shall include its designs, of the one part, and American Viscose Company, a Corporation organized under the laws of Pennsylvania, in the United States of America, hereinafter called Viscose, of the other part.

Whereas Courtaulds is the owner of the United States Patents and Applications for Patents, and which with the Patents granted on such Applications, are hereinafter called the said Patents, mentioned and set forth in the Schedule hereto, for certain Im-
122 provements, machinery, and Processes relating to the manufacture of Artificial Silk, and

Whereas Viscose is engaged in the manufacture of Artificial Silk, and desires to purchase the said Patents, and

Whereas the parties hereto have agreed upon the terms hereinafter set forth as constituting a fair and proper arrangement for such sale and purchase,

Now This Agreement Witnesseth:

1. Courtaulds will sell, and Viscose will buy, all the right, title, and interest of Courtaulds, of, in, and to the said Patents, subject to all existing rights (if any), and the same shall be transferred to Viscose, or to The Viscose Company, hereinafter referred to as its Nominee, as Viscose may direct, by such deeds, assignments, and assurances, and containing all such powers, provisions, and otherwise as Counsel shall advise to be necessary and proper.

2. Courtaulds agrees that, during the life of such one of the said Patents as shall longest continue, Viscose, or its nominee, may, in the United States, use all Patents, Improvements, Machinery, and Processes in and for the manufacture of Artificial Silk, which Courtaulds may now or hereafter own, discover, invent, obtain, or acquire, and that, during the period aforesaid, Courtaulds will, to the extent of its knowledge, give to Viscose, or its Nominee, the fullest information and disclosure as to all machinery and processes, secret
123 or otherwise, in reference to such manufacture, and extend to Viscose, or its Nominee, full inspection from time to time of its factories for such manufacture.

3. Viscose agrees that, during the life of such longest lived Patent, Courtaulds may use all Patents, Improvements, Machinery, and Processes in and for the manufacture of Artificial Silk, which Viscose, or its Nominee, may now or hereafter own, discover, invent, obtain or acquire, and that, during the period aforesaid, Viscose, or its nominee, will, to the extent of its knowledge, give to Courtaulds the fullest information and disclosure as to all machinery and processes, secret or otherwise, in reference to such manufacture, and extend to Courtaulds full inspection from time to time as desired of its factories.

4. The consideration for the said sale and purchase shall be $5,000,000.00, to be satisfied by the payment of $500,000.00 on December 31st of the year 1915, and a like sum on the same day of each year thereafter to and including the year 1924, in London, England, together with interest at the rate of six percent per annum from and including May 20th, 1915, on the said sum of $5,000,000.00, or the amount thereof from time to time remaining unpaid, payable semiannually in London, England, on the last days of June and December of each of the said years 1915 to 1924 inclusive.

5. Each of the said sums of $500,000.00 shall be secured by a Note, Debenture or Obligation of the Assignee of the said Patents, in such form and containing all such powers and provisions
124 as Courtaulds shall be advised by Counsel to be necessary and proper, including provisions that, if default is made in payment of any of the said sums or interest at the times and in manner aforesaid, and the amount due and unpaid shall not be paid within one calendar month after receipt of notice, in writing, from Courtaulds, requiring said payment, then the whole of the said sum of $5,000,000.00, or so much thereof as may for the time being remain unpaid, and interest shall become and be immediately payable.

6. If any of the payments hereinbefore mentioned shall in any way be construed to be subject to United States Income Tax, and as Viscose, or its Nominee, may be permitted by law to pay the same, Viscose agrees for itself, and its Nominee, that the Assignee of the said Patents shall make the said payments free from any deduction for or in respect of the said tax.

7. If, pursuant to the direction of Viscose, as aforesaid, the said Patents shall be assigned to The Viscose Company, and that Company shall thereon execute and deliver to Courtaulds such Notes, Debentures or Obligations, as aforesaid, then, thereupon, all liability of Viscose for satisfaction and payment of the said sum of $5,000,000.00 and interest, and every part thereof, respectively, shall absolutely cease and determine.

8. If the said sale and purchase shall not be completed on or before July 1st, 1915, or other date agreed in writing by the parties hereto, this agreement shall be at an end.

In witness whereof the parties hereto cause their Common or Corporate Seals to be hereunto affixed,

125 The Schedule hereinbefore referred to.

(1) Filament for Incandescent Electric Lamps, by C. H. Stearn, Pat. 622,087, March 28, 1899;

(2) Apparatus for Production of Filaments, by C. F. Topham, Pat. 702,382, June 10, 1902;

(3) Process of Manufacturing Filaments from Cellulose, by C. H. Stearn, Pat. 716,778, December 23, 1902;

(4) Manufacture of Filaments, etc., by Stearn and Woodley, Pat. 725,016, April 7, 1903;

(5) Apparatus for Artificial Silk, by Ryon and White, Pat. 732,784, June 7, 1903;

(6) Manufacture of Filaments, by C. N. Waite, Pat. 759,332, May 10, 1904;

(7) Purifying Viscose, by C. F. Cross, Pat. 763,266, June 21, 1904;

(8) Manufacturing Viscose, by C. N. Waite, Pat. 791,385, May 30, 1905;

(9) Viscose-Coated Fiber and Process, by C. N. Waite, Pat. 791,386, May 30, 1905;

(10) Manufacturing Filaments from Viscose, by C. A. Ernst, Pat. 792,888, June 30, 1905;

(11) Manufacturing Filaments from Viscose, by C. A. Ernst, Pat. 796,027, August 22, 1905;

(12) Bleaching Artificial Silk, by C. A. Ernst, Pat. 805,456, November 28, 1905;

(13) Forming Filaments, by C. A. Ernst, Pat. 808,148, December 26, 1905;

(14) Apparatus for Forming Filaments, by C. A. Ernst, Pat. 808,149, December 26, 1905;

(15) Manufacture of Filaments, by C. N. Waite, Pat. 816,404, March 27, 1906;

(16) Spinning Head, by M. Waddell, Pat. 823,009, June 12, 1906;

(17) Apparatus for Spinning Filaments, by M. Waddell, Patent 846,879, March 12, 1907;

126 (18) Apparatus for Forming Filaments, by M. Waddell, Pat. 849,822, April 9, 1907;

(19) Manufacture of Filaments, by C. N. Waite, Pat. 849,823, April 9, 1907;

(20) Apparatus for Forming Filaments, by M. Waddell, Pat. 849,870, April 9, 1907;

(21) Manufacture of Viscose, by M. Waddell, Pat. 855,213, May 28, 1908;

(22) Spinning Head, by C. A. Ernst, Pat. 858,648, July 2, 1907;

(23) Reeling Threads, by M. Waddell, Pat. 863,766, August 20, 1907;

(24) Forming Filaments, by C. A. Ernst, Pat. 863,793, August 20, 1907;

(25) Machine for Twisting, by M. Waddell, Pat. 867,623, October 8, 1907;

(26) Producing Filaments, by C. A. Ernst, Pat. 876,533, January 14, 1908;

(27) Filtering Viscose, by C. A. Ernst, Pat. 876,901, January 14, 1908;

(28) Forming Filaments, by C. A. Ernst, Pat. 896,715, August 25, 1908;

(29) Apparatus for Winding Reels, by J. Clayton, Pat. 967,730, August 16, 1910;

(30) Manufacture of Threads, etc., by L. P. Wilson, Pat. 970,589, September 20, 1910;

(31) Apparatus for Manufacture of Artificial Silk, etc., by J. Clayton, Pat. 979,434, December 27, 1910;

(32) Manufacture of Filaments, by S. S. Napper, Pat. 1,045,731, November 26, 1912;

(33) Regeneration of Sulphides, by L. P. Wilson, Pat. 1,106,266, August 4, 1914;

(34) Bleaching Apparatus, by J. Clayton, Pat. 1,116,242, November 3, 1914;

(35) Improvements in the Manufacture and Production of
127 Cellulose Compounds, by W. H. Glover and L. P. Wilson, Patent Application, Serial Number 3830, filed January 22, 1915;

(36) Manufacture of Cellulose Compounds, by L. P. Wilson, Patent Application, Serial Number 3831, filed January 22, 1915.

(Sd.) For COURTAULDS, LIMITED,
H. GEO. RUSHBROOK,
Secretary.

(Seal of Am. Vis. Co.)

The Common or Corporate Seal of American Viscose Company was hereunto affixed in the presence of

(Sd.) H. GEO. RUSHBROOK,
ARTHUR G. DICKSON,
Directors.

Duplicate Executed Original of Agreement Relating to Patents, May 20, 1915.

COURTAULDS, LIMITED,
and
AMERICAN VISCOSE COMPANY,
DICKSON, BEITLER & MCCOUCH,
Attorneys at Law,
No. 750 Bullitt Building, Philadelphia.

1456

Form 843
TREASURY DEPARTMENT
Internal Revenue Service
Revised June, 1929

CLAIM

TO BE FILED WITH THE COLLECTOR WHERE ASSESSMENT WAS MADE OR TAX PAID

Lac-Sou-77

The Collector will fill in the blank below the kind of claim filed, and fill in the certificate on the reverse side.

[X] Refund of Tax Illegally Collected.
[ ] Refund of Amount Paid for Stamps Unused, or Used in Excess or Error.
[ ] Abatement of Tax Assessed (not applicable to estate or income taxes).

RECEIVED
MAR 14 1932
CLAIMS CONTROL SECTION

COLLECTOR'S STAMP
(Date received)
RECEIVED
MAR 14 1932

STATE OF New York
CITY OF New York } ss:

TYPE OR PRINT

Name of taxpayer or purchaser of stamps SAMUEL A. SALVAGE

Business address 200 Madison Avenue, New York City.
(Street) (City) (State)

Residence Glen Head, Long Island, New York.

I, ..., being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed Brooklyn, N. Y.
2. Period (if for income tax, make separate form for each taxable year) from Jan. 1, 1929, to Dec. 31, 1929.
3. Character of assessment or tax Income
4. Amount of assessment, $126,755.72; date or dates of payment quarterly during 1930.
5. Date stamps were purchased from the Government ... $ 55,750.00
6. Amount to be refunded ... $
Amount to be abated (not applicable to income or estate taxes) ... $
7. The time within which this claim may be legally filed expires, under Section 322 (b) 1 of the Revenue Act of 1926, on March 15, 1932.

The taxpayer verily believes that this claim should be allowed for the following reasons:

1. The taxpayer claims that the tax assessed against him and paid by him upon an alleged gain derived from the redemption at $110. per share of 6,000 shares of the preferred stock of American Viscose Corporation should be refunded by reason of the fact that he received said 6,000 shares of preferred stock on or about December 20th, 1922, as the result of a consolidation of The Viscose Company and said American Viscose Corporation; that he had purchased 1,500 shares of the stock of The Viscose Company at $100 per share on that date and that said stock of The Viscose Company upon the date of the purchase had a value greatly in excess of the amount paid therefor, which value has been found by the Government to have been $1,164.70 per share; that taxpayer was an officer of The Viscose Company, and in effect, in purchasing the stock of said company, at $100. per share, was receiving as additional compensation the difference between said $100. per share and the real value of said stock; that such difference in value could not be taxed in the year 1929.

2. The taxpayer further claims that the preferred stock of the American Viscose Corporation received by him in 1922 upon the consolidation of the two companies was in fact a dividend upon the stock of The Viscose Company held by him and was not in any way taxable in 1929. He therefore claims that there should be refunded to him the entire amount of the tax paid by him upon the alleged gain derived from the redemption of said stock, and he further claims that the additional assessment levied against him by reason thereof should be abated.

a1

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TREASURY DEPARTMENT
Internal Revenue Service
Washington, D.C.

CLAIM

TO BE FILED WITH THE COLLECTOR WHERE AGREEMENT WAS MADE OR TAX PAID

Boston 77

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on reverse side.

COLLECTOR'S STAMP

RECEIVED
MAR 14 1932
CLAIMS CONTROL SECTION

RECEIVED

- [X] REFUND OF TAX ILLEGALLY COLLECTED.
- [ ] REFUND OF AMOUNT PAID FOR STAMPS UNUSED, OR USED IN ERROR OR EXCESS.
- [ ] ABATEMENT OF TAX ASSESSED (not applicable to estate or income taxes).

STATE OF New York
COUNTY OF New York } ss:

TYPE OR PRINT

Name of taxpayer or purchaser of stamps SAMUEL A. SALVAGE

Business address 200 Madison Avenue, New York City.
(Street) (City) (State)

Residence Glen Head, Long Island, New York.

I, deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed Brooklyn, N. Y. 1 NY 1929
2. Period (if for income tax, make separate items for each taxable year) from Jan. 1 1929, to Dec. 31 1929
3. Character of assessment or tax Income
4. Amount of assessment, $ 120,755.78; date of payment quarterly during 1929.
5. Date stamps were purchased from the Government
6. Amount to be refunded $ 55,750.00
7. Amount to be abated (not applicable to income or estate taxes) $
8. The time within which this claim may be legally filed expires, under Section 322 (b) 1 of the Revenue Act of 1928, March 15 1932.

Samuel A. Salvage

Sworn to and subscribed before me this 8 day of March 1932.

Notary Public

Collector, Dist. of N.Y.

Dec. 30, 1932

130

CERTIFICATE

I certify that an examination of the records of this office shows the following facts as to the assessment and payment of the tax:

Character of assessment and period covered	List	Year	Month	Assessed, on		Amount assessed		Paid, dimin. or Overpaid			Date of payment
				Page	Line			Date	Amount		
Income	Reg	1920	Oct.	30	1577	$ 178,258	76	3/6/20	$ 30,188	93	Pd
1919		"	"					6/5/20	30,188	93	Pd
								9/10/20	30,188	93	Pd
								12/15/20	30,188	94	Pd
				Total		$ 178,258	76	Total	$ 120,755	04	

Claim No.

I certify that the records of this office show the following facts as to the purchase of stamps:

To whom sold or issued	Kind	Number	Denomination	Date of sale or issue	Amount	If spoiled or stamp, date	
						Serial number	Initial and date

Collector of Internal Revenue.

By ____, Deputy.

COMMITTEE ON CLAIMS

Claim examined by:

Approved by:

Chief of Division.

Amount claimed... $ ____

Amount allowed... $ ____

Amount rejected... $ ____

INSTRUCTIONS

1. The claim must set forth in detail and under oath each ground upon which it is made, and facts sufficient to apprise the Commissioner of the exact basis thereof.

2. The claim shown, or errors to be by the taxpayer if possible. Whenever it is necessary to have the claim executed by an attorney or agent, on behalf of the taxpayer, an authenticated copy of the document specifically authorizing such agent or attorney to sign the claim on behalf of the taxpayer shall accompany the claim. The oath will be administered without charge by any collector, deputy collector, or internal revenue agent.

3. If a return is filed by an individual and a refund claim is thereafter filed by a legal representative of the deceased, certified copies of the letters testamentary, letters of administration, or other similar evidence must be annexed to the claim, to show the authority of the executor, administrator, or other fiduciary by whom the claim is filed. If no executor, administrator, guardian, trustee, or other fiduciary files a return and thereafter refund claim is filed by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made on the claim showing that the return was filed by the fiduciary and that the power is still existing.

4. Where the taxpayer is a corporation, the claim shall be signed with the corporate name, followed by the signature and title of the officer having authority to sign for the corporation.

131 In United States Circuit Court of Appeals for the Second Circuit

[Title omitted.]

Praecipe for record

Filed Aug. 22, 1934

You will please prepare, transmit, and deliver to the Clerk of the United States Circuit Court of Appeals for the Second Circuit copies duly certified as correct of the following documents and records in the above-entitled cause in connection with the petition for review by the said Circuit Court of Appeals for the Second Circuit heretofore filed by the Commissioner of Internal Revenue.

1. Docket entries of the proceedings before the Board.
2. Pleadings before the Board.
(a) Petition, including annexed copy of deficiency letter.
(b) Answer.
3. Stipulation of facts filed at hearing on the 7th day of December, 1933.

132 4. Memorandum opinion and decision of the Board.

5. Petition for review, together with proof of service of notice of filing petition for review and of service of a copy of petition for review.

6. Statement of evidence as settled and allowed, together with all exhibits, being Petitioner's Exhibits one (1) to eight (8), inclusive, attached to deposition, and Petitioner's Exhibit one (1) offered and received in evidence at the hearing on December 7, 1933.

7. Orders enlarging time for the preparation of evidence and for the transmission and delivery of the records not included in record.

8. This praecipe.

GEORGE B. BROOKS,
Attorney for Petitioner.

Service of a copy of the foregoing praecipe is hereby acknowledged this 22nd day of August 1934. The privilege of filing a counter praecipe is hereby waived.

ROBERT H. JACKSON,
Assistant General Counsel for the Bureau of Internal Revenue,
Attorney for Respondent.

tco.

8-22-34.

133 [Clerk's certificate to foregoing transcript omitted in printing.]

134 In United States Circuit Court of Appeals for the Second Circuit

SAMUEL A. SALVAGE, PETITIONER

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Before L. HAND, SWAN, and AUGUSTUS N. HAND, Circuit Judges

John G. Jackson, George B. Brooks, for petitioner.
Frank J. Wideman, Assistant Attorney General; Sewall Key, Helen R. Carloss, Special Assistants to the Attorney General, for respondent.

Memorandum opinion

PER CURIAM: A reargument is ordered limited to the following point arising upon the claim for refund: If the court should accept the Board's finding that The Viscose Company shares issued to the petitioner on December 30, 1922, were not to be considered as compensation for services, is he nevertheless entitled to the claimed refund on the theory that Article 31, Regulation 65, covers a case where the consideration given for the stock is a covenant not to engage in a competing business?

135 The case will be set for reargument on February 18, 1935.

The appellant's brief shall be filed on or before February 8th, the respondent's on or before February 18th.

L. H.
T. W. S.
A. N. H.

136 In United States Circuit Court of Appeals for the Second Circuit

No. 153. October term, 1934

Argued Dec. 20, 1934. Reargued Feb. 18, 1935. Decided March 18, 1935

SAMUEL A. SALVAGE, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Appeal from the Board of Tax Appeals

Before L. HAND, SWAN, and AUGUSTUS N. HAND, Circuit Judges

Petition for review of an order of the United States Board of Tax Appeals. From an order determining a deficiency in income taxes for the year 1929, the taxpayer appeals. Reversed.

John G. Jackson and George B. Brooks, both of New York City, for petitioner.

Frank J. Wideman, Asst. Atty. Gen., and Sewall Key and Helen R. Carloss, Sp. Assts. to Atty. Gen., for respondent.

Opinion

SWAN, *Circuit Judge:* The Board decreed a deficiency of $12,005.38 in the petitioner's income tax for the year 1929. He contends that not only is there no deficiency, but that he is entitled to a refund of $63,750. The controversy arises out of the fact that in 1929 the petitioner received $671,000 upon the redemption of 6,100 shares of preferred stock of American Viscose Corporation. The question in dispute is what part of this sum represents capital net gain, and this involves a determination of the cost base properly attributable to the redeemed shares.

In December 1922 the Viscose Company, of which the petitioner Salvage was an officer and employee, increased its capital stock by 4,000 shares and permitted Mr. Salvage to acquire 1,500 of them. They were sold to him at par, $100 per share, pursuant to a contract dated December 30, 1922, which recited that they were sold at less than their real value in consideration of the agreement of Salvage therein set forth. By the contract he agreed (1) that the corporation should have an option to repurchase at par five-sevenths of the 1,500 shares at any time during 1923, four-sevenths during 1924, three-sevenths during 1925, two-sevenths during 1926, and one-seventh during 1927; and (2) that he would not engage at any time throughout his life in any competing business without the company's consent. Another contract of the same date permitted him to exchange each of these 1,500 shares for four preferred shares and five common shares of American Viscose Corporation, and, with respect to the aforesaid option of repurchase, expressly substituted for each share of old stock subject to it an equivalent block of the new preferred and common. The option was never exercised in any year. In addition to the above-mentioned 1,500 shares of the Viscose Company, Mr. Salvage owned 25 shares which he had acquired in 1916 at a cost of $166.66 a share. There 25 shares he also exchanged for stock of American Viscose Corporation on the same basis of four preferred and five common for one share of the Viscose Company stock. Altogether he received 6,100 preferred and 7,625 common shares of American Viscose in exchange for his 1,525 shares of
137 Viscose stock. In 1929 his preferred shares, which were callable at $110 per share, were redeemed at the aggregate sum of $671,000. In his income-tax return for 1929 he reported as capital net gain the difference between $671,000 and the sum of $154,166.66 which he had paid for the 1,525 shares of Viscose stock. In auditing the return the Commissioner apportioned 37.778 percent of the petitioner's cost to the preferred stock and 62.222 percent to the common

stock. This resulted in ascribing to the 6,100 preferred shares a cost base of $58,123.47 and produced the deficiency in question.

Before the Board the petitioner contended, first, that he had made a "bargain purchase" of the 1,500 shares of the Viscose Company stock on December 30, 1922, that the fair market value of such stock on that date was $1,164.70 per share, and upon this basis no taxable gain was realized on redemption of the preferred shares, but, rather, there had been an overpayment of taxes; and, second, that it was impracticable to apportion the cost of the Viscose stock between the preferred and common shares of American Viscose so that no taxable gain was realized until the entire cost ($154,166.66) was recovered. The Board rejected both contentions.

It is conceded that the real value of Viscose stock on December 30, 1922, was $1,164.70 per share. The petitioner paid only $100 per share in cash, and the Commissioner concedes that the difference of $1,064.70 per share, if it had represented compensation for services, past or future, would have constituted taxable income to the petitioner in 1922, and that the market value of the stock when acquired would be the proper basis for determining gain upon the subsequent sale (or redemption) of any stock exchanged for it in a nontaxable exchange. T. D. 3435, later incorporated in article 31, Reg. 65. Said Treasury Decision, now part of the Regulations, reads as follows:

"Where property is sold by a corporation to a shareholder or member, or by an employer to an employee, for an amount substantially less than its fair market value, such shareholder or member of the corporation or such employee shall include in gross income the difference between the amount paid for the property and the amount of its fair market value. In computing the gain or loss from the subsequent sale of such property its cost shall be deemed to be its fair market value at the date of acquisition."

Although there is no suggestion in the language quoted that the property sold for less than its fair market value must be intended to be compensation to an employee for past or future services or in the nature of a dividend to a shareholder, the article has properly been so limited. Commissioner v. Van Vorst, 59 F. (2d) 677 (C. C. A. 9); Taplin v. Commissioner, 41 F. (2d) 454 (C. C. A. 6). In the Van Vorst Case the stockholder purchased real estate from his corporation at less than its market value, and the taxing officials attempted to include in his gross income the sum by which the market value of the land exceeded the price paid by the purchaser. This was not permissible, because such excess value was not "income" within the meaning of the applicable revenue act. The Taplin Case was a similar ruling where stock was purchased for less than its real value. But where the excess value is in the nature of compensation for services it does constitute taxable income when received. Robinson v. Commissioner, 59 F. (2d) 1008 (C. C. A. 6); Rodrigues v. Edwards, 40 F. (2d) 408 (C. C. A. 2). In the case at bar the Board

found that the stock was not acquired by the petitioner as compensation for services. The correctness of this finding is disputed, but, as it was made upon conflicting evidence, some of which tends to support it, we must accept it as a finding of fact.

Nevertheless the Commissioner is not aided thereby. The contract under which the petitioner purchased the 1,500 shares of Viscose stock stated that the consideration for selling it at less than its real value was the petitioner's covenants relating to the option and to his refraining from engaging in a competing business. Compensation paid for refraining from labor would seem to be taxable income no less than compensation for services to be performed. For example, a farmer who is paid for voluntarily refraining from raising hogs receives, in our opinion, income. Certainly it is neither a capital payment nor a gift. The statutory definition of gross income is exceedingly broad. Section 213, Revenue Act 1921 (42 Stat. 237). We cannot avoid the conclusion that a payment for a covenant not to engage in a certain business should be deemed "income" of the recipient of the payment. Cox v. Helvering, 63 App. D. C. 264, 71 F. (2d) 987, supports this view. See also Lihme v. Reinecke,
138 59 F. (2d) 633, 635 (C. C. A. 7). As to two-sevenths of the 1,500 shares, the petitioner acquired their full value on December 30, 1922. As to the rest, the Viscose Company still had a string upon them by virtue of its option. Until the option expired in subsequent years, the market value of the shares subject to it could scarcely exceed the price at which the company could repurchase them, namely, par. See Wilson v. Bowers, 57 F. (2d) 682, 683 (C. C. A. 2). We conclude, therefore, that Mr. Salvage made a "bargain purchase" of the 1,500 shares of Viscose stock acquired in 1922. Two-sevenths of the shares (428⅔) were not subject to the option and had a market value of $1,164.70 a share, a total of $499,157.14; five-sevenths (1,071⅓) had a market value of $100 per share, or $107,142.86. This gives a total market value for 1,500 shares of $606,300, and the cash consideration paid for them by Mr. Salvage was only $150,000. The difference was the "bargain" given him in return for his covenant not to compete. He did not, however, return it as income in 1922.

The Commissioner argues that the petitioner should be estopped to claim the basis prescribed by T. D. 3435, since he did not report the "bargain purchase" as income in 1922. The actual decision in Robinson v. Commissioner, 59 F. (2d) 1008 (C. C. A. 6), is opposed to this contention, although the point is not discussed in the opinion. Crane v. Commissioner, 68 F. (2d) 640 (C. C. A. 1), tends to support it, although the facts are somewhat different. See, also, Edward G. Swartz, Inc., v. Commissioner, 69 F. (2d) 633, 635 (C. C. A. 5). In the Crane Case, Judge Morton, in a concurring opinion, repudiated the theory of estoppel, and in our judgment makes the sounder argument. So far as appears, the petitioner's failure to report the income in 1922 was due to an innocent mistake of law; he made no

false representation of fact, and may, for all that this record discloses, have mentioned the purchase in his 1922 return. Under such circumstances we cannot find any adequate basis for an estoppel. See United States v. S. F. Scott & Sons, 69 F. (2d) 728, 732 (C. C. A. 1); Helvering v. Brooklyn City R. Co., 72 F. (2d) 274, 275 (C. C. A. 2); Sugar Creek Coal & Mining Co. v. Commissioner, 31 B. T. A. 344 (No. 72). Hence the fact that neither the petitioner nor the Viscose Company reported the sale of stock at less than its value as constituting income to the petitioner in 1922 is not material to the present issue, even though it may now be too late for the government to assess an income tax for that year.

The next step was the exchange of the 1,500 "bargain" shares and the 25 additional shares of Viscose stock for preferred and common shares of American Viscose stock. The cost base of the bargain shares, as shown above, was $606,300, and the cost base of the additional shares was $4,166.66, a total of $610,466.66. Assuming for the present that the cost base can be apportioned, according to the percentages adopted by the Commissioner, between the preferred and common shares received in exchange, the basis for the preferred shares is 37.778 percent of $610,466.66, or $230,622.09, and the basis for the common is 62.222 percent, or $379,844.57.

This brings us to the other contention, namely, that no apportionment between preferred and common stock is proper. Article 1567 of Regulation 62, so far as applicable, reads as follows:

"* * * If property is exchanged for two kinds of property and no gain or loss is recognized under articles 1564 or 1566, the cost of the original property should be apportioned, if possible, between the two kinds of property received in exchange for the purpose of determining gain or loss upon subsequent sale. If no fair apportionment is practicable, no profit on any subsequent sale of any part of the property received in exchange is realized until out of the proceeds of sale shall have been recovered the entire cost of the original property."

The validity of this regulation has been recognized by the courts. Houghton v. Com'r, 71 F. (2d) 656 (C. C. A. 2), certiorari denied 55 S. Ct. 124, 79 L. Ed. —; Curtiss v. Com'r, 57 F. (2d) 847 (C. C. A. 5); Kirkland v. Burnet, 61 App. D. C. 88, 57 F. (2d) 608. Indeed, the taxpayer does not question its validity but contends that by its very terms, since no fair apportionment of the cost was practicable, the entire cost of the old stock must be recovered from the amount realized by redemption of the new preferred. He argues that in The Viscose Co., 3 B. T. A. 444, the Board held that the assets of the corporation could not be accurately valued because they were a
139 mixed aggregate of tangible and intangible property, and therefore urges that it was impossible in 1922 to value the stock by the formula adopted by the Commissioner. The Commissioner adopted a method which this court approved in Houghton v. Commissioner, supra. Moreover, it was in exact accord with the report

made by a firm of certified public accountants employed by the taxpayer for the very purpose of determining his federal income tax in accordance with the regulations. Although there were no actual sales of either the old or the new stock, there can be no doubt that it could have been sold, if offered, for the business had been extraordinarily successful over a period of several years. The taxpayer has not proved that the market value ascribed by the Board to preferred and common stock was erroneous or that no fair apportionment between them of the cost of the old stock was practicable. We accept the Board's finding that it was practicable.

It is true that the Board did not consider the fact that five-sevenths of the 1,500 Viscose shares acquired in 1922 were subject to an option. Its apportionment was made on the assumption that each share of Viscose had a market value of $1,164.70 and was exchanged for a block of four shares of preferred and five shares of common of American Viscose, which, as a block, had a value of $1,164.70. Because of the option, each optioned share of Viscose had a value of only $100, and the block of American Viscose for which it was exchanged also had a value of only $100 because as a block it was subject to the option. We see no reason, however, why the consideration paid for the optioned block should not be apportioned between preferred and common shares constituting it, on the same basis as in the case of a block not subject to the option. Accordingly the cost base of the 6,100 shares of preferred was, as shown above, $230,622.09. As the base adopted by the Commissioner was $58,123.47, it follows that there was no deficiency in tax, but a substantial overpayment, the exact amount of which should be determined by the Board in accordance with the principles laid down in the foregoing opinion.

Order reversed, and cause remanded.

140 In United States Circuit Court of Appeals, Second Circuit

SAMUEL A. SALVAGE, PETITIONER

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Decree

Filed March 25, 1935

Appeal from the United States Board of Tax Appeals

This cause came on to be heard on the transcript of record from the United States Board of Tax Appeals, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the order of said United States Board of Tax Appeals be, and it hereby is, reversed.

It is further ordered that a Mandate issue to the said Board in accordance with this decree.

WM. PARKIN, *Clerk.*

141 [File endorsement omitted.]

142 [Clerk's certificate to foregoing transcript omitted in printing.]

143 Supreme Court of the United States

Order extending time within which to apply for writ of certiorari

No. 280. October term, 1935

Filed June 25, 1935

On consideration of the motion of counsel for petitioner in the above-entitled cause, and good cause therefor having been shown,

It Is Ordered that the time within which petition for writ of certiorari may be filed herein be, and the same is hereby, extended for a period of 30 days from this date.

J. C. MCREYNOLDS,
Associate Justice of the Supreme Court of the United States.

Dated this 25th day of June, 1935.

144 Supreme Court of the United States

No. 173. October term, 1935

Order allowing certiorari

Filed October 14, 1935

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

145 Supreme Court of the United States

No. 280. October term, 1935

Order allowing certiorari

Filed October 14, 1935

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript

of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(Endorsement on cover:) File Nos. 39,727, 39,834. U. S. Circuit Court of Appeals, Second Circuit. Term No. 173. Guy T. Helvering, Commissioner of Internal Revenue, petitioner, vs. Samuel A. Salvage. Term No. 280. Samuel A. Salvage, petitioner, vs. Guy T. Helvering, Commissioner of Internal Revenue. Petitions for writs of certiorari and exhibit thereto. Filed June 25, 1935, and July 25, 1935. Term Nos. 173 O. T. 1935, 280 O. T. 1935.

U. S. GOVERNMENT PRINTING OFFICE: 1935